83d Congress
2d Session

COMMITTEE PRINT NO. 23

FEDERAL LAND OWNERSHIP AND THE PUBLIC LAND LAWS

REPORT

ON

TAXES AND OTHER IN-LIEU PAYMENTS ON FEDERAL PROPERTY, PREPARED BY THE LEGISLATIVE REFERENCE SERVICE, LIBRARY OF CONGRESS

FOR THE USE OF THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
HOUSE OF REPRESENTATIVES

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COMMITTEE NOTE

Under the rules of the House of Representatives of the Congress of the United States, all proposed legislation and matters relating to "the public lands generally" are referred to the Committee on Interior and Insular Affairs.

Few problems pertaining to the public domain are of such widespread interest as those involving the petition by State and local taxing units for in-lieu payments by the Federal Government to compensate for the loss of tax revenue. Statistics show that—

The total land area of the continental United States is 1,905,361,920 acres.

In the series of international agreements and treaties which established the boundaries of the continental United States, the Federal Government acquired title to all the land outside the original 13 States and Texas (the latter area totaling 463,094,400 acres).

The total area of the public-domain States was 1,442.3 million acres. Of this, titles to 42.8 million acres were granted or confirmed to satisfy State and private claims based on grants by foreign governments before acquisition by the United States.

Of the remaining 1,399.5 million acres, 991.9 million acres were disposed of through homesteading, sales, grants, and other methods.

Approximately three-fifths of the remaining public-domain land has been reserved for special public uses.

Lands acquired to be added to the public domain—or to Federal ownership—total 48.2 million acres.

Almost one-fourth of the area of the continental United States is held by the Federal Government.

To date, 18 bills dealing with the so-called payments in lieu of taxes problem have been introduced and referred to the House Committee on Interior and Insular Affairs. It is my belief that this preliminary study submitted by Representative D'Ewart will furnish factual and statistical data that will be of great interest to Members of the Congress and all others concerned with this vital matter. It is further hoped that the utilization of this report by representatives of States, counties, municipalities, and other bodies having taxing authority, will stimulate even greater cooperative effort by such groups to assist the Congress in an ultimate solution of the problems posed by reason of Federal property holdings.

A. L. MILLER, *Chairman.*

FEDERAL LAND OWNERSHIP AND THE PUBLIC LAND LAWS: TAXES AND OTHER INLIEU PAYMENTS ON FEDERAL PROPERTY

To: Hon. A. L. Miller, Chairman, House Interior and Insular Affairs Committee.

From: Hon. Wesley A. D'Ewart, Chairman, House Public Lands Subcommittee.

Historically, the Public Lands Subcommittee has carried out its legislative function of maintaining a continuing study of existing laws and regulations, and proposed modifications thereof in matters coming before it relating to—entry on the public lands of the United States, mineral, homestead, irrigation, etc.; utilization of public lands for recreation, lumbering, grazing, and in cooperation with other agencies, conservation and watershed development; legislative and administrative provisions affecting those forest reserves created from the public domain; administration of national parks and the preservation of national monuments, prehistoric ruins, and objects of interest on the public domain; and jurisdiction legislatively of the Nation's military parks, battlefields, and national cemeteries.

BACKGROUND HISTORY OF THE REPORT

During the 1st session of the 83d Congress, the committee staff was instructed to assemble certain materials relating to the public lands of the United States, with particular emphasis on—

1. The extent and value of Federal rural and urban land holdings;
2. The effect of Federal land ownership on tax revenues of State and local governmental subdivisions; and
3. Current statutory authority governing in-lieu payments on federally owned property, and statutory provisions for the sharing of Federal revenues derived from the public lands.

Following a conference with representatives of the various executive departments, and exchanges of correspondence, it was agreed that in order to frame these proposals in workable perspective, there must be developed some basic working document which might include factual and statistical data in such manner as to present the picture as it is today.

SOME OF THE PROBLEMS INVOLVED

Accordingly, conferences were had with the Legislative Reference Service, Library of Congress, and agreement was reached that this agency would initiate a preliminary study having as its objective digesting the summarizing the following:

1. Federal ownership and acquisition of rural and urban lands and its effect on governmental subdivisions;
2. The extent, location, and value of Federal land holdings, with estimates of tax losses locally by reason thereof;

3. Benefits that flow to affected areas by reason of the ownership of property by the Federal Government; and
4. Specifically, answers to these questions:

(*a*) What are the Federal laws currently in force permitting State and local taxation of Federal property in the same manner as privately owned property?

(*b*) What are the Federal laws currently in force authorizing contributions by Federal agencies from revenues based on a specific percentage of the receipts?

(*c*) What are the Federal laws currently in force authorizing contributions of an unspecified proportion of revenues of Federal agencies, the actual amount to be arrived at by agreement or other arrangements?

(*d*) What are the Federal and State constitutional and statutory provisions for taxing or exempting Federal property?

(*e*) What are the proposals currently being made for changes in the Federal law with respect to *a*, *b*, and *c*, above?

(*f*) What are the arguments for and against existing law and the currently proposed changes in the law?

(*g*) What basic arrangements are made in other countries of the world, especially those having a federal form of government?

PRELIMINARY STUDY COMPLETED

The preliminary study by the Library of Congress, Legislative Reference Service, has now been completed, and the original copy of this agency's report is herewith transmitted for appropriate action. It is the work of Raymond F. Manning, then senior specialist in taxation and fiscal policy.

I believe, from my analysis of this preliminary report, that it constitutes an invaluable basic working document for use in the committee's study of legislation pending before it, including a total of 17 bills introduced in the 83d Congress, to provide for payments in lieu of taxes, and 1 resolution, having as its purpose establishment of a Public Lands Commission.

This report should also serve as an excellent factual and statistical compilation for utilization in the broad approach to public lands problems during this, and in future, sessions. I am convinced it will help to bring into focus many of the factors which serve to define for the Congress the inside and outside limits of the framework within which legislation touching on public lands matters must be developed.

A brief extract from this report of certain statistical information and conclusions therein emphasizes the need for a continuation of the study of Federal land ownership and its impact on governmental subdivisions. Read in light of the history of development of our public-lands policy, I should like to highlight a few of the more pursuasive highlights.

The picture yesterday . . .

Since the earliest days of the Republic, title to approximately 1 billion acres of public land has passed from the United States. This exchange from Federal to non-Federal ownership has included chronologically: (*a*) Sale of land to help meet the expenses of the Government in the early days of the Republic; (*b*) land granted as bounty for

military service, and for public improvements such as canals, railroads and highways, and for the benefit of schools, colleges and other public institutions in the various States; (*c*) the policy—following the Civil War—effecting disposition through homesteading and land settlement, thus permitting expansion of the American system, or of the Union, westward to the Pacific until the (*d*) present era of conservation and resource management of the more than 700 million Federal acres remaining in the United States and Alaska.

. . . *And the picture today*

As will presently be pointed out, there are not available today figures or statistics which can be labeled acccurate enough and precise enough to present a clear picture of Federal land ownership and its impact on non-Federal governmental subdivisions.

It can be said, with the foregoing qualification as to reliable data, that the Federal Government owns approximately one-fourth of the total land area in the United States; in Alaska, Federal ownership approximates 99 percent (365 million of 365,500,000).

Federal against non-Federal ownership of real property has its greatest impact because of its effect on revenues derived from taxation. A now 17-year-old study placed the value of federally-owned lands within the United States at 2.89 percent of the existing valuation of all privately owned property subjected to taxation.

As of today, the States and the Federal Government have preempted most revenue sources other than that derived from the property tax; local government contends that the presence of tax-exempt Federal property has so reduced the economic capacity of some local taxing units that their financial independence is in fact threatened.

A never challenged concept of our Federal system, which early gave rise to constitutional immunity from taxation, holds that if the States and local governments could exercise the power to tax Federal instrumentalities, they would have the power to destroy the Federal Government itself. Today, allegation is made that this original concept is now available as a tool for the former potential victim to throttle the former potential destroyer.

Studies during the past 20 years

As early as 1935, the executive branch, through a committee appointed by the President, undertook a study of Federal ownership of real estate and of its bearing on State and local taxation.

The committee's report was submitted in 1938, and as a result of recommendations made therein, a Federal Real Estate Board was appointed by the President to "study and make appropriate recommendations," regarding the situation in different communities adversely affected by the loss of tax revenues on land purchased or acquired by the Federal Government.

The Federal Real Estate Board report was submitted in 1943; during the same period the Treasury Department, through a special committee, had undertaken a study of the whole subject of Federal, State, and local fiscal relations and presented its report in 1943.

In 1949 following a conference of Federal, State, and local officials on the subject of intergovernmental tax problems and fiscal relations, the Bureau of the Budget was requested to develop comprehensive recommendations on the subject of in-lieu tax payments. Several of the broader bills of the 18 now before the House Public Lands Subcommittee had their genesis in the Budget Bureau's prototype bill.

Over the years our subcommittee has studied the problem, with the most recent effort—that of the 82d Congress under the subcommittee chairmanship of Representative Lloyd Bentsen, of Texas—resulting in an excellent report.

With many of the basic facts in hand as a result of the report herewith transmitted, and with some tentative conclusions noted in following paragraphs, need for a continuing, nonpartisan, comprehensive study is clear. It is believed that priority for legislative and administrative attention is self-evident in the tentative conclusions which follow.

Basic need: A continuing inventory

There is today no central record, nor are there reasonably complete and readily available, dispersed records of what the Federal Government owns and what it is worth. Few States know the amount or value of Federal property—real or personal—within their limits. The preliminary report concludes that agreement is general that the Federal Government should provide the facilities for a continuing inventory of such property.

It follows that, in the absence of a Federal real and personal property inventory, no accurate estimate can be made of the extent and value of Federal holdings; true impact on governmental subdivisions is not susceptible of fact determination.

At the time the report was initiated, no such inventory was in process. However, in recommending certain changes in the House version of the first independent offices appropriation bill for 1954, the Senate Committee on Appropriations (S. Rept. No. 237, 83d Cong., 1st sess., p. 5) made this observation:

> * * * The committee is advised that the Federal Government is completely without an inventory of its real property holdings, that each agency usually keeps track only of its own acquisitions and knows nothing of suitable acquisitions that may already be available in other agencies of the Government. Properly prepared and kept current, such an inventory could be of real value in effecting economies in acquisition where land or space may be available from other agencies, and could be helpful in many other ways in the complex operations of the Federal Government.
>
> Therefore, within the funds available to them, the committee requests the General Services Administration to begin the work of compiling such an inventory of Federal real estate and requests the General Accounting Office to work out and put into operation the necessary accounting and reporting procedures to keep such inventory current. * * *

Our committee is advised by GSA that such an inventory is now in process, with an anticipated completion date on or before January 1, 1955. Clear-cut authority for inventory continuance, and assurance that funds for that purpose will be available in the future, should be spelled out in future consideration of budgetary requests by this agency.

"Lost": 50 million Federal acres

A 1937 estimate showed that the Federal Government owned 394.7 million acres of real estate—a figure which obviously does not include the approximately 365 million acres in the Territory of Alaska alone. This would represent about 20.74 percent of the total land area of the United States.

For reasons not entirely clear on the record, some 50 million acres were "lost" or left out of the 1937 estimate. Inclusive of this 50 million acres—since "found"—but exclusive of net additions since

1937, Federal holdings in 1937 should have been shown as 444.6 million acres, instead of 394.7 million acres; percentagewise, the adjusted figure would then read 23.6 percent, not 20.74 percent.

Net additions since 1937 indicate that Federal acreage, approximating 11 million acres have been made, suggesting a grand total today of nearly 456 million acres.

To the 11 Western States, the 23.36 percent known Federal holdings is of special significance. Those States—Washington, Oregon, California, Idaho, Nevada, Montana, Utah, Arizona, Wyoming, Colorado, and New Mexico—insofar as rural holdings are concerned, have within their boundaries 88.5 percent of the total land area in Federal ownership.

Basic need: Evaluation of dollar impact

Complementary to, or as a result naturally flowing from the absence of a Federal property inventory, is the absence of bases for making any worthwhile estimate of the "tax loss" suffered by the governmental subdivisions by reason of Federal tax immunity.

Based on the 1937 study, both land and improvements have an estimated cost value of $6.2 billion, and an assessed valuation of $3.3 billion; this figure represented 2.89 percent of the assessed valuation of all private property then being taxed.

A more recent study—made in 1948—concludes that the 11 Western States have an estimated 12.83 percent of their real property base off the local tax rolls as a result of Federal immunity from taxation.

It is pointed out as an interesting contemporary fact that all tax-exempt real estate (private and public) was, in 1937, more than six times the value of all Federal tax-exempt real estate.

Some effort by individual States has resulted in production of at least local figures intended to show the estimated tax loss. The County Supervisors Association of California in 1953 prepared a report summarizing the 1939–52 picture in that State:

> In that 13-year period the Federal Government acquired 2,114,516 acres of California land. Estimated assessed valuation of this land was in excess of $73 million, with the assessed value of improvements thereon estimated at nearly $245 million. Real property tax loss to local government in California on Federal property acquired since 1939 is fixed at $16.9 million; it should be noted this is annual loss. Military defense plants alone represent more than $280 million in estimated assessed valuation lost to local government in California.

$71 million . . . and up

Without attempting to determine the soundness for such estimates as have been made, the preliminary report for the committee's use reaches the unqualified conclusion that there are not now available any estimates of a current nature of the amounts of tax loss by reason of Federal property ownership.

Estimates range from a possible $71 million (1937), to $125 million (1948, one source), and $250 million (1948, another source), describing the estimate as embracing only "relatively unimportant categories of Federal property." In 1952, an estimate of $300 million was tendered, and the source of this 1952 estimate stated in 1954 that he considers the $300 million figure "too low."

As one representative of an executive department put it in conference with committee staff members:

> Just to be safe, add a digit to the $300 million estimate, making it $3 billion * * * and we can work inside those figures.

Urban picture: Not available

What has been said of deficiencies statistically in the rural-property-inventory and rural-property-valuation areas applies with equal force with respect to urban property holdings of the Federal Government.

While the 50 million "lost" acres of Federal rural property may have been found, urban Federal holdings acreagewise can only be discussed in terms of estimates—the most recent of which was made 17 years ago, resulting in a figure of 47,444 acres.

In view of greatly increased Federal activity during the period of World War II, it is probable that the total urban acreage is today far in excess of the 1937 estimate.

Nor are there available, as previously indicated, current reliable figures to indicate the value of this urban property; no report subsequent to that of 1937 has been made available to suggest current estimates; furthermore, there is not now in existence any Federal agency having authority to make such studies, and to inventory such property.

Policy: Bad faith or failure to cooperate?

A reading of this preliminary report, with some reference to source material cited, tends to convince the reader that accusations of bad faith leveled at Congress and Federal administrative agencies—implying affirmative intent—are not entirely justified.

Committee staff members, in conferences and correspondence with groups representing non-Federal bodies (a conclusion reflected in this report) have concluded that only through a cooperative assault, Federal-State-local-public-private, can a degree of success be achieved. If it appears clear that the Federal Government must inventory, marshal, and evaluate its holdings, it is equally clear that "impact groups" must unify their efforts for fuller cooperation.

Many examples of extreme hardship are cited; covering a wide geographic area: Hoboken, N. J.; Rochester, N. Y.; San Francisco, Calif.; Stratford, Conn.; Renton, Wash.; Cuyahoga Falls, Ohio; Muskegon, Mich.; Greenwood Township, Pa.; Bettendorf, Iowa; Schenectady, N. Y.; Alpine, Inyo, and Trinity Counties, Calif.

Without regard to hardship examples, Congress should give early attention to at least two primary policy matters which frequently give rise to accusations of bad faith: First, the propriety of the United States taking property—either through condemnation or by donation—and later leasing it to private operators for commercial purposes, or otherwise turning it into a revenue-producing venture of the Federal Government at the expense of the local taxing authority; and second, establishment of procedures assuring that purchase or condemnation of additional lands for Federal purposes be permitted only after careful surveys to determine whether land already in Federal ownership could not be made available.

The committees of Congress must stand ready to cooperate with the executive branches of the Federal Government to assure non-Federal units of good faith intent policywise.

Legislation: What and when?

Doubt is expressed that any one piece of legislation can provide the answer to the problems here posed. It appears that one single

agency, to act as a clearinghouse for payments-in-lieu proposals, must be established.

Realistic approach suggests—and the attitudes of several national organizations reflect this suggestion—that piecemeal legislation (initially, at least) may provide the only satisfactory solution. The National Association of County Officials, in 1953, concluded:

> Past efforts looking to the enactment of comprehensive legislation have failed partly because they attempted too much. Federal properties are held under a variety of conditions; no blanket formula can easily bring about the desired balance between local and Federal interests. Experience has conclusively proven that the problem cannot be solved by enactment of "piecemeal" legislation; but as a general approach, we must concentrate on first relieving those aspects of the problem which have grown in recent years. For it is that part of the problem which has caused the oppressiveness of the present situation. When that immediate problem has been taken care of, needed amendments can be adopted from time to time to alleviate other inequities which continue to exist.

Put another way, impact victims are more interested in a curative-preventive Federal role, than a historic assurance which announces, in effect that "should the victim expire a full-blown Federal wake will be arranged by the agency responsible."

Congress must give its early attention to the very real problem of locally distressing economic conditions by reason of Federal property holdings—whether broad or piecemeal. The indications are that many cities, counties, school districts, and other taxing units find very little solace in the promise today that at some date in the future—the date unspecified—some "broad," "comprehensive," "over-all," "far-reaching," "equitable," and "universally agreeable" program will be developed. If these governmental subdivisions are bleeding to death financially in 1954 as a result of Federal impact, it is doubtful that a legislative tourniquet—to be applied, say, in 1975—will save the victim.

The Legislative Reference Service in the transmittal of this report indicated its preliminary character and the need for its being submitted to the various Federal and non-Federal agencies concerned in order to bring out additional current factual data, to help reconcile numerous ambiguities, and to obtain the points of view of the executive agencies having under their jurisdiction federally owned lands.

Respectfully submitted.

WESLEY A. D'EWART,
Chairman, House Public Lands Subcommittee.

Preliminary Report

on

TAXES AND OTHER IN-LIEU PAYMENTS ON FEDERAL PROPERTY

Prepared for

House Committee on Interior and Insular Affairs

by the Legislative Reference Service, Library of Congress

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Senior Specialist, Taxation and Fiscal Policy

FEBRUARY 1, 1954

CONTENTS

CHAPTER I

SUMMARY AND INTRODUCTION

A. The Basic Problem

101. The Federal Government is the largest landowner in the United States. It now owns nearly one-fourth of the total land area. (See pars. 232–233, 241.) The ownership extends to desert wastelands, mountain tops, parks, river dams, improved urban sites, commercial and industrial property, and numerous other types of holdings. (See par. 201.) Some are very valuable; some are nearly worthless. In spite of the fact that the Federal Government owns about one-fourth of the total land area, the proportionate value of the property is much less. A study (see par. 232) placed the June 30, 1937, value at 2.89 percent of the assessed valuation of all privately owned property then being taxed.

102. Under the Constitution of the United States, Federal property cannot be taxed by the States or their local units, without the consent of Congress. (See par. 301.) Spokesmen for local governments (and occasionally for the States) contend that the presence of so much tax-exempt Federal property has reduced their capacity to tax to such a degree that their financial independence is threatened. (See pars. 203–208.)

103. The problem, especially so far as local governments are concerned, stems principally from the fact that they are largely dependent on the property tax for their revenue. (See par. 211.) So when a large tract of any kind or a small tract of especially valuable property goes off the tax rolls, the capacity for self-financing is endangered. (See pars. 203–205.) At the same time that financial capacity is reduced, activities created by or associated with the Federal property impose additional service burdens. (See pars. 211, 219, 221.) The problem is further accentuated, because the concentration of Federal property is uneven. (See par. 202.) The State as a whole may benefit from increased taxes resulting from the presence of a large defense production facility, for example, but the locality may suffer a tax loss and at the same time be called upon to furnish many additional services. The problem becomes acute when a local area with a large bonded debt suddenly finds itself without constitutional capacity to tax a piece of property formerly privately owned, but which has been acquired by the Federal Government. (See pars. 222, 226.)

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B. Need for an Inventory

106. Ever since this problem has achieved national importance, the need for an inventory of Federal property has been felt. There have been starts toward such an inventory, and directives that one should be compiled, but there is still no central record, nor even reasonably complete available dispersed records, of what the Federal Government owns or what it is worth. Few of the States know the amount or value of Federal property within their limits. There is general agreement that the Federal Government should provide the facilities for a continuing inventory of Federal property. The most recent positive step in this direction is a survey aimed at determining what surplus Federal real property can be sold.[1] The survey will involve all Federal real properties, including lands, buildings, and other improvements, but excepting public domain, lands such as national forests, national parks, and other areas obtained and retained under law for purposes of conservation of natural resources.

C. Congressional Attempts To Solve the Problem

111. Early in the history of our country, the Congress decided to share with the States and local units a part of the proceeds from public lands. (See par. 665.) The sums shared with the States and local units were not considered full compensation for the absence of authority to tax, but they at least provided some palliative. Quite a different situation, however, arose with World War I, but more especially with World War II and the Korean conflict, when the Federal Government acquired large areas of valuable rural and urban property for military installations, defense-production facilities, and the like. (See pars. 441–453, 561–567.) These often brought with them new large populations and a consequent demand for schools, roads, and other public services which the communities were financially unable to provide. Some specific relief was provided, including provision for payments in lieu of taxes, wartime construction of various local facilities at national expense, and grants to help operate some local services such as schools in war-affected communities, but the broad problem of tax-exempt Federal property remained unsolved.

112. Irrespective of Federal ownership of property, the States and (especially) local governments have complained that the Federal Government, by reason of its extremely high and diverse taxes, has preempted most tax sources available to them. They find it extremely difficult to finance the governmental activities demanded of them. So when the generally bad situation is made worse by reason of Federal ownership of property, then the Federal Government tends to become the whipping boy for all local financial ills, and the Congress is confronted with demands for relief. Individual Congressmen respond with scores of bills.

113. Some of the bills are enacted and become law. It is notorious, however, that each of the problems (to the extent it was solved at all) was solved in its own way. Some attention was paid to prior solutions and some basic similarities appear in the resultant bits of legislation.

[1] Press release of General Services Administration and Bureau of the Budget, December 30, 1953.

However, it can be said that we have quite a miscellaneous collection of some 50 or 60 pieces of legislation (depending on how one counts) dealing with as many phases of the problem.

D. Attitude and Studies of Federal Officials

116. The attitude of most Federal agencies and officials is to concede that there are some cases of hardship and inequity. They will usually suggest the need for establishing a more simple, more equitable, and more stable method of tax payments or payments in lieu of taxes than is presently in operation. However, history shows that (perhaps with reason) they have rejected nearly every proposal that has been made. This may or may not be a reflection of the good will (or lack of it) on the part of the Federal agencies. The fact is that it is extremely difficult to draft an acceptable bill, and it must be conceded that most of the bills offered as general solutions have been poorly drafted. However, as will be pointed out at greater length below (see par.122), the bill offered by the Bureau of the Budget in 1951 was the result of long, earnest, and arduous consideration in the Bureau. Yet most Federal agencies seriously concerned (and some State and local associations) found much fault with it, and Congress has so far taken no action on it.

117. We have to go back to 1935 for the first real show of interest on the part of the Executive in the problem. At a meeting of the National Emergency Council held on December 17, 1935, the President appointed the Secretary of the Treasury, the Attorney General, and the Acting Director of the Bureau of the Budget to serve as a committee to make a study of Federal ownership of real estate and of its bearing on State and local taxation. This committee reported on October 14, 1938, and made several recommendations.[2]

118. One of the recommendations was that there should be created a Federal Real Estate Board. Three months later the President set up the Federal Real Estate Board to—

> study and make appropriate recommendations regarding the situation in different communities adversely affected by the loss of tax revenue on land purchased or acquired by the Federal Government.[3]

119. The Federal Real Estate Board submitted its report to the President together with its conclusions and recommendations. The President in turn submitted it on May 26, 1943, to the Congress which had it printed.[4]

120. During much of this same period the Treasury Department, through a special committee,[5] was studying the whole subject of Federal, State, and local fiscal relations, including payments in lieu of taxes. Its report was presented to Congress shortly after that of the Real Estate Board and it too was printed.[6]

121. Nothing much came from these reports, except a few more congressional bills and hearings. The Treasury committee ceased to

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[2] Federal Ownership of Real Estate and Its Bearing on State and Local Taxation. Washington, U. S. Government Printing Office, 1939, 19 p. (H. Doc. No. 111, 76th Cong., 1st sess.).

[3] Executive Order 8034, promulgated January 14, 1939, 4 Federal Register 249.

[4] Federal Contributions to States and Local Governmental Units With Respect to Federally Owned Real Estate. Washington, U. S. Government Printing Office, 1943, 50 p. (H. Doc. No. 216, 78th Cong., 1st sess.).

[5] The committee consisted of Harold M. Groves, Luther Gulick, and Mabel Newcomer.

[6] Letter from the Acting Secretary of the Treasury. Federal, State, and Local Government Fiscal Relations. Washington, U.S. Government Printing Office, 1943, 595 p. (S. Doc. No. 69, 78th Cong., 1st sess.).

exist after submission of its report but the Federal Real Estate Board continued, though for the most part in a quiescent state. It was finally dissolved in 1951.[7]

122. New spirit was introduced in April 1949 when the subject was discussed as part of a conference of Federal, State, and local officials, meeting on the subject of intergovernmental tax problems and fiscal relations. The Bureau of the Budget was requested by the conference to work out comprehensive recommendations on the subject of payments to State and local governments in connection with Federal property. The Bureau undertook this, and after many conferences with the affected agencies submitted a draft bill and a report in August 1951. The bill is noteworthy particularly as it represents the first executive proposal submitted by any administration seeking a fairly general solution to the problem, even though it would replace only 20 of the much more numerous pieces of legislation. It does, however, authorize payments in many cases for which no provision now exists. The draft bill was introduced in both the Senate and House during the 82d and 83d Congresses. It will be discussed at length throughout this study, especially in chapter V. No congressional action has been taken on this proposal although it has now been before the Congress for 3 years.

E. Need for a New Approach?

126. Critics of existing statutory provisions employ the whole range of uncomplimentary adjectives and descriptive phrases concerning the present laws. They describe them as lacking a clearcut uniform policy, inadequate, reflecting no consistency of policy, lacking comprehensiveness, and striking diversity. The statutes, as they point out, still leave most agencies with no authority to make payments on their property, and even where there is authority similar properties under the jurisdiction of other agencies are treated differently. A piece of property completely taxable when held by one agency may become completely exempt when transferred to another, without any change in the function which the property serves.

127. The conclusion is that in the absence of overall Federal standards, no regularity of payments is assured and no uniformity of treatment is attainable under the present law. An entirely new approach in the form of comprehensive legislation is said to be needed. The Bureau of the Budget has said:

> There has been general agreement that the Federal Government has responsibilities in this field which can be dealt with adequately only in general legislation applying to a wide range of properties.[8]

128. Dissent has been raised to the conclusion that even with an accepted set of principles, any comprehensive legislation alone will provide the answer. There is a belief that the whole subject is so complex that no one blanket approach can do the job. This thought is reflected in the fact that most comprehensive bills and studies propose a special agency to watch the operation of the law and administer it. Thus the 1943 Treasury report said:

> * * * More important by far than any single set of rules and principles for guidance in determining payments in lieu is the development of some machinery

[7] Executive Order 10287, Sept. 6, 1951.
[8] U. S. Bureau of the Budget: Executive Communication No. 722, Regarding Payments in Lieu of Taxes, Aug. 16, 1951, p. 2.

whereby such rules can be established, revised, and used effectively. In other words, what is needed is a clearinghouse for payments-in-lieu proposals.[9]

129. Further, despairing of any satisfactory overall solution, there is some thought that the realistic approach must be through more piecemeal legislation. The committee of one organization states that view in this way:

However, in view of past experience and the considerable number of years this particular problem has been studied in the past, we cannot be too sanguine of the Commission furnishing the complete or any substantial answer to our problem. This committee feels that the realistic approach that a half a loaf is better than none is long overdue and that without abandoning our ultimate objectives that we in conjunction with the other organizations representing local units of government should press for the enactment of the best possible legislation that can be secured at the earliest possible date. The studies and the efforts to attain the ideal in legislation from the local governmental standpoint can continue, but, in the meantime, we believe it highly desirable that the existing inequities should be at least partially adjusted by the commencement of Federal payments to the hard-pressed local units of government which are financially suffering from the ever-increasing encroachment of Federal properties and conduct of Federal activities within their jurisdictions. Such payments will not only provide financial relief, but will unquestionably retard in some degree, future Federal acquisition, and could result in the release of considerable surplus Federal property and its return to local tax rolls.[10]

130. To conclude on this point, it is argued:

Past efforts looking to the enactment of comprehensive legislation have failed partly because they attempted too much. Federal properties are held under a variety of conditions; no blanket formula can easily bring about the desired balance between local and Federal interests. Experience has conclusively proved that the problem cannot be solved by enactment of piecemeal legislation, but as a general approach, we must concentrate on first relieving those aspects of the problem which have grown in recent years. For it is that part of the problem which has caused the oppressiveness of the present situation. When that immediate problem has been taken care of, then needed amendments can be adopted from time to time to alleviate other inequities which continue to exist.[11]

[9] Federal, State, and Local Government Fiscal Relations, p. 24. (Letter from the Acting Secretary of the Treasury, S. Doc. No. 69, 78th Cong., 1st sess.).
[10] National Association of Municipal Law Officers: Report of Committee on Municipal Revenues From Federally Owned Property, 1953, pp. 9–10.
[11] National Association of County Officials: Why . . . 1953, p. 8.

CHAPTER II

THE ECONOMIC PICTURE

A. Introduction

201. The Federal Government is and always has been the largest landowner in the United States. It owns now nearly one-fourth of the total area of the States. (See pars. 232–233, 241.) The property has greatly diverse characteristics. There are extensive areas of nearly worthless land, and also extremely valuable small sections or sites. Some of the lands are arid, some are mountaintops, and some are very fertile. There are highly improved urban locations, strategically located industrial plants, and costly dams and power installations. These differences are set forth at some length in the attached quotation:

> In the various States, the property owned by the Federal Government is of many types and differing values. It includes desert wastelands, mountains, mineral lands, grazing lands, plains, parks, improved and unimproved property, rural, urban, industrial, commercial, residential, recreational, agricultural and other kinds of property. Some of the Federal properties are very valuable; others are of little value. Some primarily serve and benefit local interests; others primarily benefit national interests. Some of the properties exert an important influence on the economic life of the communities in which they are located; others have little, if any, effect on the life of the community. Much of the Federal property has never been on the taxrolls of the local taxing authorities; some of the Federal property was originally taxed locally and was removed from the tax base through its acquisition by the Federal Government. Federal property is used for a variety of purposes, such as the general administration of government, services to the local public, care of wards of the Government, national defense, development and protection of commerce, land utilization and conservation, low-rent and defense housing, Indian welfare, conservation and utilization of water resources, research and experimental work, and for many other purposes.[1]

202. Except as Congress has permitted (see pars. 301–322), all such property is exempt from taxation by the States and local units. This tax exemption in numerous instances has created difficult problems of local finance. If all Federal property were evenly distributed throughout the United States, most of the problem would disappear. However, the fact is that the distribution is most uneven, and it is this that largely creates the problem. In pre-World War II days, it was generally the nonurban type of property that received the most attention; since that time it is the relatively valuable small tract of urban property that has held the spotlight.

[1] Guandolo, Joseph: Payments to Local Governments in Lieu of Taxes, pp. 9–10. (Mimeograph

203. Spokesmen for local governments contend that the presence of tax-exempt Federal property has so reduced the economic capacity of some units that their financial independence is in fact threatened. Forced as they are to depend largely on the property tax as a source of revenue—because of the preemption of other revenue sources by the States and the Federal Government—they cannot provide the necessary schools and public services rightfully demanded of them.

204. It is alleged by a representative of the American Municipal Association that:

* * * tax exemptions, improperly applied, are a serious threat to local self-government in the United States. The rapidly growing amount of federally owned real estate has reached the point, in some instances, where it threatens the financial integrity, if not the very existence, of local governmental units.[2]

205. A committee of the National Institute of Municipal Law Officers asserts that:

* * * the ever-increasing encroachment of Federal ownership is creating a situation in some local units of government, disastrous in its financial consequences * * *[3]

206. A pamphlet of another organization points out that:

* * * The National Association of County Officials for approximately 15 years has had as its main legislative objective, relief from the drain which is imposed on the tax base of local government by Federal tax-exempt property, as a means of achieving more equitable Federal-State-local fiscal relations.[4]

207. The allegation is then made that the original concept which gave rise to the constitutional immunity (namely, that if the States and local units had the power to tax Federal instrumentalities they could destroy the Federal Government itself), is now available as a tool for the former potential victim to throttle the former potential destroyer. This follows because there is little restriction on the Federal power to acquire land. If the land must remain tax exempt, then the Federal Government could acquire all the land area of a particular State and thus wipe out the property tax altogether. The State itself and many local units could be bankrupted if the Central Government so desired.

208. One organization therefore concludes:

If local governments become unable to finance their various programs, the inevitable result will be that the State and National Governments will take over these functions. The inability of a considerable number of local agencies to do a job because their tax base has been destroyed by Federal tax immunity may be urged as justification for transfer of functions to the State or Federal Government. When such transfers are made, local governments will lose another portion of their hard-won home rule. The strength of local government depends on the vitality of all its parts. The inordinate and unnatural growth of federally owned property at the expense of the normal tax base has weakened local control and contributed to a potentially dangerous centralization of our Government.[5]

[2] Hamilton, Randy H. Hearings Before a Special Subcommittee of the House Committee on Government Operations on H. R. 5605, July 20, 1953, pp. 34-35.
[3] Report of Committee on Municipal Revenues From Federally Owned Property. 1953, p. 4. (Mimeographed.)
[4] National Association of County Officials: Why . . . 1953, p. 1
[5] National Association of County Officials: Why . . . 1953, p. 4.

B. General Statement on Hardship

211. The basic economic problem stems from the fact that more than half the revenues of local governments, counties, cities, towns, school districts, etc., are derived from the property tax. Therefore, when the Federal Government acquires a very large tract of land or a valuable piece of industrial property, the affected local government suffers a revenue loss. At the same time that it loses the revenue, its expenditures may be increased because of additional service requirements, e. g., additional roads, schools, police, etc. A result may be complete inability to service outstanding debt. There can be no question but that severe hardship has resulted in numerous instances.

212. Aggravating circumstances have also aroused the ire of local officials particularly. Often when a piece of property has been taken, or even sometimes received as a gift,[6] it has been later leased by the United States to private operators for commercial purposes or otherwise turned into a revenue-producing venture of the Federal Government at the expense of the local government. The sole or principal purpose of the taking (or continued holding) has seemed at times to be the avoidance of local taxes. This has evoked charges of bad faith.[7]

C. Impact on Urban Areas Illustrated

216. The impact of Federal ownership on urban or relatively heavily populated areas flows largely from military reservations, ordnance and industrial plants, defense housing projects, and the like. These mean frequently that valuable properties are removed from the tax rolls. They further often mean an influx of people for whom all the various public services must be provided. The impact has been particularly severe on the public schools.

217. Examples are the best way to illustrate the problem. Historically, one of the earliest and most severe cases is that of Hoboken, N. J. That story is told briefly as follows:

> At the beginning of World War I, in 1917, the Government took title to the Hoboken Terminal, comprising 6 piers and 1,959,600 square feet (50.5 acres) of land having an assessed value of $12,269,000. During World War II the United States Navy took title to additional property consisting of 21.3 acres, together with improvements thereon, assessed for $7,227,000. The total assessed value of Government-owned property in Hoboken is $19,496,000. The total area is 57.33 acres, or 14.4 percent of the total land area of the city, and 19.462 percent of the total assessments.
>
> * * * * * * *
>
> The additional tax burden imposed upon the taxpayers of Hoboken by the exemption of the pier property controlled and operated for commercial purposes by the Maritime Commission, from 1918 to 1949, amounts to $16,046,440.73.[8]

218. San Francisco is also a frequently cited hardship example. From testimony given in 1949, it appears that:

> The Federal Government owns approximately 6½ square miles of San Francisco's small area of only 44 square miles. Deducting State-owned property, it would own 6½ square miles out of 28. Federal real property in San Francisco is

[6] We find, for example, that bills have been introduced in Congress to require payment of the cost of land donated to the United States by the States or political subdivisions for military purposes which are subsequently leased by the United States or used for other purposes. See H. R. 3362, 83d Cong.

[7] Some examples are: The purchase and lease of piers at Hoboken, N. J., by the Maritime Commission; purchase in Rochester, N. Y., of the Duffy-Powers Bldg. and lease to Eastman Kodak Co.; transfer to United States of title to taxpaying Defense Plant Corporation "Symington" plant in Rochester, 3 days before end of the year.

[8] Memorialization by the city of Hoboken, N. J., to the U. S. Maritime Commission for Hoboken's Acquisition of Title in Government-Owned Piers, Apr. 22, 1949, pp. 3, 5-6.

valued at about $170 million with a minimum present tax loss to San Francisco of about $5 million, a severe burden to San Francisco and its other property owners who must pay higher taxes. In view of San Francisco's confined peninsula-type location and its built-up condition, there is a serious shortage of property and therefore any property released by the Federal Government could be immediately used by private industries or homeowners and would give rise to private payrolls and increased property-tax returns.[9]

219. Stratford, Conn., presents a recent case of a single huge defense plant which exceeds in value the total of all taxable property in the town. The town manager reported that the value of the plant (assessed at 70 percent of actual value—the same as other property) is $83,231,000 as compared with a total valuation of all taxable property of $67,733,000. The town manager continued:

* * * The town of Stratford has suffered many years from the loss of taxes from this large Federal-owned property which has caused great distress to our community because of the educational and other services required. Located in a rapidly growing defense area, we need immediate financial tax relief from this Federal-owned property.[10]

220. Renton, Wash., is an example of hardship flowing from a transfer of property from the Reconstruction Finance Corporation, and resulting in tax exemption of previously taxed property. A resolution of the city council declared:

Whereas the Boeing-Renton airplane manufacturing plant and the new foundry at the Pacific Car & Foundry plant were transferred from the Reconstruction Finance Corporation, an agency of the Government, to the United States Government * * * which transfers have the effect of removing said property from the tax rolls, resulting in a loss of approximately $99,450 anticipated tax revenue * * *; these properties representing two-fifths of the total tax yielding properties in the city of Renton * * *.

Whereas said Boeing-Renton plant and the new foundry at the Pacific Car & Foundry plant are revenue-producing properties occupying several acres in the city, containing structures heretofore used for manufacturing and suitable for such, portions thereof being leased by the Government to business concerns which pay rentals to the Government for the same, and the Government accordingly derives income therefrom * * *.[11]

221. Cuyahoga Heights, Ohio, offers a potential example of hardship. The solicitor of that village declared:

* * * We had suddenly presented to that village of 800 people, the problem of the defense installation which has been estimated to run between $40 million to $60 million, on the present duplicate of $60 million, which will either duplicate by a hundred percent our present duplicate or pretty close to that. Our village will receive absolutely no benefits from that installation, but will have great burdens placed on it. The insurance rates will go up to virtually double what they are today. It will require an installation of additional police facilities, perhaps a hundred percent more than we have at the present time. The fire-protection facilities required, because of the very nature of these giant forge presses, will be much greater than we ever contemplated in that village. Already, because of the contemplated traffic which this plant will bring, the county is contemplating a new bridge and new traffic approaches, which is a terrible burden on the county and this village for which there is no recompense.[12]

222. When the affected area has a large outstanding indebtedness and a substantial portion of the taxpaying property is removed, then serious consequences result. This is illustrated by the situation in

[9] Keesling, Francis V., Jr. Hearings (unpublished) before the House Committee on Public Lands, In H. R. 1356, Mar. 2, 1949, pp. 40–41.
[10] Hearings before the Senate Committee on Government Operations, on S. 2473, July 29, 1953, p. 16.
[11] Resolution No. 783 of the city of Renton, adopted September 8, 1950.
[12] Hearings before the Senate Committee on Government Operations, on S. 2473, July 29, 1953, p. 19.

Muskegon, Mich. As reported by the Congresswoman from the Ninth Michigan District:

* * * the Army Ordnance directed the Continental Motors Corp., of Muskegon, Mich., on December 18, 1952, not to pay the 1952 taxes assessed against the property by the Orchard View School District. The immediate loss of revenue to this small school district is $41,427.60, or 52 percent of its total revenue. The effect of the loss of this and future revenue to Orchard View School District is disastrous because its good citizens of the district have obligated themselves to bonds totaling $385,000 for a new school, which is now being built. The 1952 bond payments alone total $27,680, leaving only $14,000 for operations. This throws a heavy burden on a community where the citizens have obligated themselves to build new school facilities to accommodate the children of many employees of this particular defense plant.[13]

223. A recent specific instance serves to point up the issue. In Schenectady, N. Y., an old plant lay idle for years. Then the Federal Government took it over, built it up, and leased it to the General Electric Co. for the manufacture of armament and ordnance control systems. The Government objected to its assessment for tax purposes and the city officials agreed to the Government's demand. County and school officials were still said to be "thinking it over" but there seemed to be nothing that they can do. Their position was based at least in part on the thought that a private firm was using the property to make money, and local governments should have the power to tax it.[14]

D. Impact on Rural Areas Illustrated

226. The impact of Federal ownership on rural areas is often solely a temporary one, but at other times serious consequences may arise when the rural area has a substantial bonded indebtedness and Federal acquisition of a large portion of the area impairs its ability to finance that indebtedness. This problem is set forth in the testimony of a spokesman for the National Institute of Municipal Law Officers who declared:

Violent injury is almost always done to rural local governments when the United States suddenly takes over large real-estate holdings for Army or Navy installations or reservations. It is true that eventually the local governments give very little in the way of services to such installations which normally provide for their own interior government, their own public utilities, their own interior highways and fire and police protection. But the local governmental unit may have incurred a very substantial bonded indebtedness, relying upon the taxes to be received from such properties. When a substantial part of its real estate is relieved from its proportionate liability of that bonded indebtedness, that share is cast upon the owners of the remaining taxable properties. That, in some cases, has resulted in practical confiscation because the bonded indebtedness has approximated or even exceeded the fair value of the equities of the remaining owners. Whenever the Government takes title to real estate formerly subject to local taxation so that it thereafter is immune from taxation, the Federal Government should provide for the payment of the pro rata share of the bonded indebtedness of local government applicable to such properties.[15]

227. The same spokesman continued:

Let us take the case where a rural governmental unit is geared to certain local services for the financing of which it is accustomed to rely upon all the taxable real estate in its domain. The Government steps in and acquires 25 and some times 50 percent of the taxable properties for a military reservation or other governmental purpose. In some cases, eventually, the increased valuations and

[13] Daily Congressional Record, Feb. 19, 1953, p. A798.
[14] Business Week, September 12, 1953, p. 78.
[15] Emerson, William H. Hearings (unpublished) before the House Committee on Public Lands, on H. R. 1356, March 2, 1949, pp. 66-67.

development of the surrounding areas will, to some extent, make up for the loss of these taxable properties. However, there is immediate shock which sometimes is intolerable. To a lesser degree, that prevails every time the Government acquires property in its name which was formerly subject to local taxation. In all cases where the Government takes property from the tax rolls, it should continue for at least 2, or possibly 3 years, to pay the local governments the equivalent of the taxes theretofore collected from such properties. This will give the local government a chance to revamp its services and absorb the loss of revenues.[16]

E. General Statement on Extent and Value of Federal Holdings

231. No inventory of Federal property exists. This fact has been discussed briefly above. (See par. 106.) Without such an inventory or State and local data on the value of tax-exempt Federal property, no accurate estimate can be made of the extent and value of Federal holdings, nor can any worthwhile estimate be made of the "tax loss" suffered by the States and their local units by reason of the exemption of Federal property.

232. A study made in the late 1930's estimated that as of June 30, 1937, the Federal Government owned 394.7 million acres of real estate, about 20.74 percent of the total land area of the United States, which cost (both land and improvements) $6.2 billion, with an estimated assessed value of $3.3 billion, representing about 2.89 percent of the assessed valuation of all privately owned property then being taxed.[17] An interesting contemporary fact is that all tax-exempt real estate (private and public) was more than six times the value of all Federal real estate.[18]

233. Later studies have shown that the just-mentioned study underestimated the 1937 ownership of Federal lands by approximately 50 million acres.[19] If that approximately 50 million acres had been included in the 1937 estimate, Federal holdings would have been about 444.6 million acres (instead of 394.7 million acres) or about 23.36 percent (instead of 20.74) of the total land area. Net additions since that time have raised the total to nearly 456 million acres. Ratios of the value of Federal property in relation to all State-assessed properties are not available other than the 2.89 percent figure shown in par. 232. However, a 1948 estimate for the 11 Western States gives a figure of 12.83 percent for those 11 States.[20]

234. To cite the facts in a single State, a report issued by the County Supervisors Association of California shows the 1939–52 picture in that State. This report has been summarized as follows:

> In California, between 1939 and 1952, the Federal Government acquired 2,114,516 acres of land. It has an estimated assessed valuation of $73,051,269. Improvements thereon have an estimated assessed value of $244,921,255. The estimated yearly property tax loss to local government in California alone on Federal property acquired since 1939 is $16,927,107. Military and defense plants alone represent $280,569,910 in estimated assessed valuation that has been lost to local government in California. That loss in revenue became an additional tax burden to the property owners throughout the State even though the

[16] The same, p. 68.
[17] Federal Ownership of Real Estate and Its Bearing on State and Local Taxation, appendix A (A message from the President of the United States. H. Doc. No. 111, 76th Cong., 1st sess.).
[18] See C. B. Pond: The Value and Importance of Exempt Real Estate in the United States. Taxes (Chicago), July 1940, vol. 18: 416–422.
[19] Senzel, Irving: Increase in Federal Land Ownership, 1937-1945. U. S. Department of the Interior. Washington, 1949, pp. 1, 27. (Mimeographed.)
[20] National Education Association: Status and Fiscal Significance of Federal Lands in the Eleven Western States, 1950, p. 144.

Federal acquisitions served a national interest. The inequitable tax burden thereby thrust upon particular taxpayers should be recognized as the prime responsibility of all who pay taxes to the Federal Government.[21]

235. Just a few words of comment will be added here on one aspect of the extent of Federal holdings of personal property. Reference is made to the Federal Government's program of stockpiling strategic and critical materials needed in an emergency to supplement dependable sources of supply. The total stockpile objective, based on December 31, 1953, prices, was $6.8 billion. As of that same date, the actual stockpile inventory was $4.3 billion.

F. Extent and Value of Urban Federal Holdings

236. In the report for 1937 discussed above, the area of urban real estate was estimated as 47,444 acres. No figures were supplied indicating what the value of this property was. No available subsequent reports have estimated what the urban acreage was at any later date.

G. Extent and Value of Rural Federal Holdings

241. Referring once more to the report for 1937, rural Federal holdings amounted to 394.6 million acres. Allowing for the previously mentioned approximately 50-million-acres error, this actual area approximated 444.5 million acres. In the interim since 1937, there was a net increase in rural holdings of about 11 million acres bringing the 1950 total to 455.6 million acres, or 23.9 percent of the land area of continental United States. Geographically, 88.5 percent of the total Federal holdings of rural lands were in the 11 Western States.

242. The holdings of rural land within continental United States were distributed among the agencies in 1950 as follows:[22]

[21] National Association of County Officials: Why . . . 1953, p. 6.
[22] These data are taken almost exclusively from R. D. Davidson's Federal and State Rural Lands, 1950 (U. S. Department of Agriculture Circular No. 909), May 1952.

Agency	*Acres*
Atomic Energy Commission	487, 519
Bonneville Power Commission	7, 030
Department of Agriculture:	
Agricultural Research Administration	166, 083
More than four-fifths of the total holdings were reserved public domain used chiefly for animal husbandry and range and pasture experiments. There were 69 sites used for research purposes, usually small tracts of farmland acquired by purchase or gift.	
Farm Credit Administration	234, 144
Farmers Home Administration	14, 189
Holdings as of 1950 consisted mainly of scattered tracts of farmlands foreclosed in connection with administration of farmloan programs. There was some repossessed resettlement land also. Ownership of all land was strictly temporary.	
Forest Service	[1] 160, 582, 176
National forests were established primarily for production of timber and protection of watersheds. About 139.0 million acres were from the reserved public domain and 21.6 million acres were acquired lands. Approximately 80 million acres of national forest land were usable for grazing, of which (in 1949) 90 percent were actually grazed.	
Soil Conservation Service	[1] 7, 415, 084
Of the total holdings of the Service, 7.3 million acres were administered under title III of the Bankhead-Jones Farm Tenant Act, 75,538 acres were in irrigation projects under the Wheeler-Case Act, and 7,486 acres were nursery and research areas not on title III land. Much of the title III lands were submarginal lands acquired by the Government to correct maladjustments in land use. Most title III land was grazing and forest land.	
Department of Commerce	45, 381
Department of Defense	21, 458, 455
The Department's holdings included 19.3 million acres for the Army and 2.1 million for the Navy. Flood-control lands of the Corps of Engineers amounted to 2.5 million acres. Of the total holdings, they were almost equally divided between acquired lands and public domain land.	
Department of Justice, Bureau of Prisons	20, 588
Department of the Interior:	
Bureau of Indian Affairs	57, 279, 729
Though the Bureau of Indian Affairs had 57.3 million acres of land under its jurisdiction, 17 million acres were trust-allotted land owned by Indians under United States guardianship, 39 million acres were owned collectively by tribes, and the remaining 1.3 million were federally owned land reserved for the benefit or use of the Indians. Thus in the ordinary sense, Indian land is not public land. Agriculture was the primary use made of the land, though much of it was arid or semiarid. Roughly 44 million acres were pasture or range, and about 7.5 million acres were classified as commercial forests.	

[1] According to testimony in the hearings before the subcommittee of the House Appropriations Committee on the Department of Agriculture appropriation for 1955 (p. 711), there were 181 million acres of national forests in 40 States, Alaska, and Puerto Rico. It is also to be noted from this testimony (p. 738) that as of January 1, 1954, the management of 80 land utilization projects in 30 States, totaling 7,049,923 acres was transferred from the Soil Conservation Service to the Forest Service.

Agency	*Acres*
Department of the Interior—Continued	
Bureau of Land Management	179, 093, 483
About 170.0 million acres of the Bureau's holdings were vacant, unreserved, and unappropriated public domain, and 9.1 million acres were reserved land. Most of the land was arid and semiarid plains, virtually none of which was suitable for dry-land farming. Commercial timber holdings were largely limited to the revested railroad grant land in Oregon. The greatest commercial value of the land administered by the Bureau was for mineral production. About 87 percent of the land was suitable for limited or seasonal grazing.	
Bureau of Mines	1, 293
Bureau of Reclamation	9, 927, 560
The Bureau of Reclamation plans, constructs, and operates facilities to irrigate lands, furnish domestic water supplies, and develop related hydroelectric power and flood control in the 17 Western States. About 9.3 million acres of the Bureau's lands were reserved public domain and 0.6 million acres were acquired lands. Three-fifths of the land held by the Bureau was actively managed by other agencies, e. g., grazing leases by Bureau of Land Management, forest and watershed management by Forest Service, recreational facilities by National Park Service, etc.	
Fish and Wildlife Service	4, 128, 784
Land administered by the Service was managed as part of the nationwide system of fish and game refuges. About 2.5 million acres held by the Service were acquired lands. In addition to the 4.1 million acres of land under the exclusive jurisdiction of the Service, there were 5.2 million additional acres under joint or secondary administration and 0.3 million acres managed under cooperative agreements with States. Much of the land held was wasteland, though some was timberland and some was good farm land.	
National Park Service	13, 955, 638
The Service administers national parks and other areas of unusual interest to preserve their scenic and historic values. Of the total holdings within continental United States, 11.9 million acres were reserved from the public domain, and 2.0 million acres were acquired lands. Holdings included rugged mountains, deserts, and other lands having little value other than for scenic and recreational purposes, but including some forests and some land suitable for watershed protection, power development, wildlife, and grazing. Preservation of historic and scenic values largely precluded use of park land for agricultural and forestry production.	
Department of the Treasury, Coast Guard	28, 929
Federal Security Administration (now Department of Health, Education, and Welfare)	31, 925
Tennessee Valley Authority	458, 631
The Authority administered 458,631 acres in addition to about 577,000 acres in stream channels and impoundments. Of the land area, roughly 307,000 acres were in forest and woodland, 78,000 acres in farm land, and the remainder was mostly used for park and recreational purposes, wildlife, watershed protection, and communication and power facilities.	
Veterans' Administration	56, 406
War Assets Administration	239, 146
This holding was surplus military land being disposed of to the original owners. The remnants were transferred later to the General Services Administration.	
Total, all rural lands, continental United States, 1950	455, 632, 173

H. Extent of Tax Loss

246. There are no reliable estimates of the amount of tax loss which the States and their local units suffer as a result of the Federal ownership of approximately one-fourth the land area of the United States. The above-referred-to study of Federal real-estate holdings estimated a tax loss of $91,051,374, without consideration of the 50 million acres omitted from that study. (See par. 233.) In a statement made in 1949, the Council of State Governments estimated that the $91 million figure might have risen to $125 million.[23]

247. Another estimate was made in 1949 by the National Association of County Officials. Hearings were being held on the bill introduced by Representative Engle which is similar to that currently being sponsored by Representative Lane. (See pars. 936–941.) This bill provides for the taxation by the States of all Federal property other than 11 relatively unimportant categories. In the referred to hearings, Mr. Keith L. Seegmiller, the Washington representative of the Association, said:

> We have made a very general estimate, and I want to underline "very general," of $200 million to $250 million a year. We have based that on some facts that I can give. We feel it certainly will not exceed $250 million and probably will not be less than $200 million.[24]

248. From certain remarks that took place during the hearings in response to questions addressed to Mr. Seegmiller, it appears that this estimate may have been too low.[25]

249. In a paper prepared for presentation before the section of municipal law of the American Bar Association in September 1952, Joseph Guandolo (Associate General Counsel of the Housing and Home Finance Agency) said that enactment of general legislation for taxing substantially all Federal property would cost, according to the estimates of others, "some $300 million annually." [26]

250. In a study released by the National Education Association, there is an estimate of the amount of taxes that would have been payable on Federal real property in the 11 Western States in 1948. Exclusive of taxes on river dam projects (which are not included) the estimate was $93.5 million.[27] The report also noted that as of that time the 11 States were already receiving payments totaling $29.3 million on account of Federal real estate therein.

251. The Bureau of the Budget has made estimates on the bill (S. 788) introduced by Senator Humphrey in the present Congress. The details on this bill are discussed throughout chapters IV and V, but roughly it provides for actual tax payments on some properties, in lieu payments on property serving national or broad regional interests, temporary transition payments, and special assessments for local improvements; the bill makes no provision for payments with respect to the public domain nor most other properties acquired before a cutoff date. (See pars. 831–837.) The Bureau in making its estimates of cost used three frequently mentioned cutoff date possibilities, namely 1939, 1946, and 1950. The estimates are as follows:

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[23] Federal-State Relations, p. 114.
[24] Hearings (unpublished) before the House Committee on Public Lands, on H. R. 1356, June 21, 1949, p. 15.
[25] See for example the discussion at the same hearings on June 22, 1949, pp. 34–35.
[26] Mr. Guandolo did not cite who the "others" were who made the estimates. Conversation with him gave the impression that he currently considers the $300 million figure as too low.
[27] Status and Fiscal Significance of Federal Lands in the Eleven Western States. Washington, National Education Association, 1950, p. 146.

Estimated annual expenditures under the proposed bill for payments to State and local governments on Federal real property if the act had been effective during the fiscal year 1950 [1]

[In millions]

Basis of expenditures	Estimated expenditures based on cutoff date in—		
	1939	1946	1950
Title I (administratively determined payments):			
Department of Defense	$92.8	$6.3	$3.3
Other agencies	38.4	24.3	18.5
Less adjustment for limit on payments on certain improvements	−25.0	−2.0	−1.0
Total, title I	106.2	28.6	20.8
Title II (taxation):			
Department of Defense	20.0	20.0	20.0
Other agencies	1.4	1.4	1.4
Total, title II	21.4	21.4	21.4
Title III (special assessments):			
Department of Defense	(2)	(2)	(2)
Other agencies	.4	.4	.4
Total, title III	.4	.4	.4
Title IV (supplementary system of payments)	(2)	(2)	(2)
Administrative expense:			
Department of Defense	1.8	.8	.4
Other agencies	1.1	.8	.4
Total, administrative expense	2.9	1.6	.8
Expenditures under proposed bill:			
Department of Defense	114.6	27.1	23.7
Other agencies	41.3	26.9	20.7
Less adjustment for limit on payments on certain improvements (title I)	−25.0	−2.0	−1.0
Total, expenditures under proposed bill	130.9	52.0	43.4
Expenditures under laws superseded by proposed bill:			
Department of Defense	1.0	1.0	1.0
Other agencies	18.7	18.7	18.7
Total expenditures under superseded laws	19.7	19.7	19.7
Expenditures under proposed bill less expenditures under superseded laws:			
Department of Defense	113.6	26.1	22.7
Other agencies	22.6	8.2	2.0
Less adjustment for limit on payments on certain improvements (title I)	−25.0	−2.0	−1.0
Total, expenditures under proposed bill less expenditures under superseded laws	111.2	32.3	23.7

[1] Hearings before the Senate Committee on Government Operations on S. 2473, July 29, 1953, p. 46.
[2] Not available.

252. It should be noted further that the potential tax liabilities expressed above (pars. 246–250) for certain proposals are not a true measure of the actual taxes lost by the States and local governments. The reason is that already some Federal property is being subjected to full State and local taxation, in-lieu payments are being made with respect to many others, and revenues from certain Federal properties are being shared with the States and local governments in lieu of taxes. Further, much Federal property is being applied to uses of a sort that results in exemption regardless of ownership, e. g., schools, hospitals, prisons, and certain other institutions. A summary of the Federal laws providing for taxes, in-lieu payments, sharing, etc., is presented below in chapter III.

CHAPTER III

THE LEGAL PICTURE

A. Introduction

301. The basic legal problem is that the Federal Constitution, as construed by the courts, exempts Federal property from taxation by the States and local units, except as Congress by statute may permit. No useful purpose would be served by an elaboration of the history of intergovernmental tax immunity, except to say that the immunity (so far as property taxes are concerned) can be traced principally through the McCulloch, Van Brocklin, and S. R. A., Inc., cases.[1] It was the Van Brocklin case in 1885 that really decided the point, although there had been a general belief before that time that Federal property was exempt. It is interesting to note, however, that to be doubly sure Congress wrote the exemption into the enabling acts admitting certain Territories to statehood. The same rule applies where the tax is a special tax or assessment for local improvements.[2] However, it is well settled that the lawmaking authority may waive this exemption wholly or with such limitations as it may deem proper.[3]

302. A subsidiary legal problem derives from provisions in certain State constitutions and statutes exempting Federal property from taxation, so that even when Congress permits taxation of Federal property the affected States and their local units may be powerless to benefit therefrom. This point is developed at greater length below. (See pars. 909–911.)

303. It is further interesting to note that tax and other immunities originally derived from the fear that State power to tax would in effect be the power to restrict the sovereignty of the Federal Government. It is now argued that the reverse of the situation has occurred and the power of the Federal Government in acquiring property can and is being used to impair the sovereign power of the States to impose property taxes and to finance their own needs.[4] (See pars. 207–208.)

304. It has been pointed out above (and it will be developed at length later), that the Congress has enacted laws providing for the entire or partial removal of immunity of Federal property from State and local taxes. Congress has also enacted numerous statutes for various payments in lieu of taxes and sharing of revenues from cer-

[1] 4 Wheaton 316 (1819); 117 U. S. 151 (1885); 327 U. S. 558 (1946).
[2] *Lee* v. *Osceola and Little River Road Improvement District* (268 U. S. 643 (1925)); *Mullen Benevolent Corp.* v. *United States* (290 U. S. 89 (1933)).
[3] *Austin* v. *The Aldermen* (7 Wall. 694, 699 (1869)).
[4] Seegmiller, Keith L. Hearings (unpublished) before the House Committee on Public Lands, Mar. 2, 1949, p. 29.

tain types of property. However, an annoying circumstance is the existence of a very considerable array of largely uncoordinated separately enacted laws framed to meet the situation and pressures of the moment. To summarize, while the basic constitutional exemption has been retained for much property, the exemption has been modified in some instances and completely withdrawn in others. Thus if the property is owned by the Army or the Navy, it is tax-exempt. On the other hand, if it is owned by the Reconstruction Finance Corporation or one of its subsidiaries, it is fully taxable. Similarly, if housing property is owned by the housing agency, payments in lieu of taxes are paid. If the same housing property is transferred to the armed services, no taxes are paid. The charge is made that Federal agencies sometimes conspired to have the title vest in such a way that no taxes or in-lieu payments would be due. Thus it was said:

> It is still an unsolved mystery to many of us why title to such properties was sometimes taken in the name of the public corporation and at other times in the name of the United States. However, in almost all cases, the executive and administrative branches of the Government took title in the name of the United States. This must have been for the sole purpose of evading local taxation in defiance of the expressed will of Congress.[5]

B. Tax Status of Federal Property Summarized

306. Federal property, as previously pointed out, is exempt from all State and local property taxes, except as Congress has made provision for removal of that exemption in whole or in part. Congress has seen fit to view its property holdings in various different lights according to the type of property involved. For some properties, it continues to maintain complete exemption and makes no payments to the areas in which the property is located. Most Federal agencies are still without general authority to make payments on their properties.[6] In other cases, it continues the exemption but provides for sharing the revenues derived therefrom. In a third category are properties on which, though Congress has decided to maintain the exemption, it has provided for making certain payments in lieu of taxes (based in some degree on the value of the property or the cost of the public services rendered) which may more or less approximate the sums which would have been paid if the property had not been tax-exempt. A final class of property is that for which Congress has completely removed the exemption, thus permitting the States and local units to tax as though the property were privately owned. In addition, special assessments for local improvements are also authorized, though rarely. Each of these types of property, together with the pertinent laws, are reviewed below.

307. The properties for which no provision for any type of tax payment have been made, fall into several types. First there is property involved in the general administration of the Government and that providing services to the local public. Included are the various Federal office buildings, post offices, customs houses, weather stations, etc. Except for the District of Columbia which receives lump-sum payments fixed annually by the Congress, no payments

[5] Keesling, Francis V., Jr. Hearings (unpublished) before the House Committee on Public Lands, on H. R. 1356, Mar. 2, 1949, p. 63.
[6] U. S. Bureau of the Budget: Executive Communication No. 722, Regarding Payments in Lieu of Taxes, Aug. 16, 1951, p. 1.

are received by local governments on account of this property. Closely related to this type of property are the various penal institutions, hospitals, etc., maintained by the Federal Government. Various facilities designed to assist and promote commerce, such as lighthouses and radio stations, continue exempt. There are the various reclamation projects, national parks, river and harbor works, and flood-control projects, which (except for a minor sharing of revenue) are exempt. Also exempt, although there is some sharing of revenues, is most of the public domain. Finally, there are the recently greatly increased holdings of property used for national defense, including industrial properties, arsenals, navy yards, forts, camps, and the like.

C. Law on Shared Revenues

311. Revenue sharing of receipts from property was the first type of payment to the States that could in any general sense be considered a payment in lieu of taxes. It is still (perhaps) the most important one. The early legislation provided for sharing a portion of the revenues from the disposal of public lands. Thus, as early as 1803, the act for admission of Ohio to the Union provided that the State should receive 3 percent of the proceeds from the sale of public lands therein.[7] As the emphasis of Federal policy shifted from one of disposal of public lands to one of conservation, the emphasis on sharing of revenue shifted to one of granting the States and local units a portion of the revenue from their operation and development. At least some of the programs could not have been enacted in the absence of provision for sharing.[8] As a practical matter, natural resources are almost always involved.

312. There are substantial similarities and substantial dissimilarities in the percentages of receipts which are payable. The portions payable range all the way from 5 percent to 10, 12½, 25, 37½, 50, or 75 percent. In addition, though somewhat different, are the two provisions of law for allocating to the States 100 percent of the revenue from the excise tax on firearms, fishing rods, etc.

313. At the present time, Federal revenues are shared as follows:

Department of Agriculture

National forests (in general).—25 percent of all moneys received from each national forest shall be paid to the State in which the national forest is located. The proceeds are to be used as the State legislatures shall prescribe for the benefit of the public schools and roads of the counties in which the national forest is located. The sums currently being paid to the States amount to approximately $18,700,000 per year [16 U. S. C. 500]. Although not strictly a share-the-revenue arrangement, but worthy of note nevertheless, is the provision under which 10 percent of the receipts from national forests are designated by Congress to be spent for the construction and maintenance of forest roads and trails within the national forests in the States from which such receipts are derived. The sums currently being expended amount to approximately $7,500,000 per year [16 U. S. C. 501].

National forests in Arizona and New Mexico.—Such proportion of the gross proceeds of all national forests located within Arizona and New Mexico as the area of lands granted for school purposes bears to the total area of all national forests in each of the two States, shall be paid to each. The proceeds are to be paid into the common school fund of each State. The sums currently being paid to Arizona and New Mexico total approximately $123,000 per year [36 Stat. 562, 573, sec. 6, 24].

[7] 2 Stat. 226, sec. 2.
[8] See, for example, the statement of Representative Franklin Mondell, Congressional Record (Washington), vol. 58, October 30, 1919, p. 7772.

Submarginal land held by the Forest Service.—25 percent of the net revenues received from the use of such lands (but exclusive of proceeds from sale of land) shall be paid to the counties in which such lands are situated. The funds are to be used for school and road purposes. The sums currently being paid to the counties amount to approximately $440,000 per year [7 U. S. C. 1012].

Department of Defense

Lands acquired for flood-control purposes by Corps of (Army) Engineers.—75 percent of moneys received from the lease of such lands shall be paid to the States in which such property is located. The proceeds are to be used as the State legislatures shall prescribe for the benefit of the public schools and roads of the counties in which the lands are located. The sums currently being paid to the States amount to approximately $850,000 per year [33 U. S. C. 701c–3].

Department of the Interior

Public lands sold, including timber, sand, and other materials thereon.—5 percent of the net proceeds from the sale of such lands, including materials thereon, shall be paid to the States in which located. The proceeds are designated for various uses including education, roads, and certain other internal improvements [31 U. S. C. 711 (17), 43 U. S. C. 391, 1187, and numerous acts applicable to single States]. The sums currently being paid to the States amount to approximately $70,000 per year.

Public lands in Alaska reserved for school and other educational purposes.—The entire income derived from the sale of timber and disposition of such lands reserved for school or other educational purposes or minerals thereon shall be set apart as permanent funds of the Territory to be invested. The income from the investment shall be expended as the legislature may prescribe for the benefit of the public schools or the agricultural college and school of mines. The sums currently being added to the fund amount to approximately $700 per year [48 U. S. C. 353].

Public lands within grazing districts.—12½ percent of the grazing fee receipts (section 3 permits) are paid to the States. The proceeds are to be used as the State legislatures shall prescribe for the benefit of the counties in which the lands are located. The sums currently being paid to the States amount to approximately $177,500 per year [43 U. S. C. 315b, 315i].

Grazing fee receipts from public lands outside grazing districts.—50 percent of the grazing fee receipts from such lands (section 15 leases) are paid to the States. The proceeds are to be used as the State legislatures shall prescribe for the benefit of the counties in which the lands are located. The sums currently being paid to the States amount to approximately $200,000 per year [43 U. S. C. 315i, 315m].

Grazing districts on Indian lands ceded to the United States.—33⅓ percent of the fees from grazing districts on such lands are paid to the States in which such districts are located. The proceeds are to be used as the State legislatures shall prescribe for the benefit of the public schools and roads of the counties in which such grazing lands are located. The sums currently being paid to the States amount to approximately $350 per year [43 U. S. C. 315j].

Revested Oregon and California grant lands.—50 percent of the receipts of the Oregon and California land-grant fund, plus the unearmarked portion of an additional 25 percent are paid to the Oregon counties in which the lands are situated. The funds may be used for the same purposes as other county funds. The sums currently being paid to the counties amount to approximately $6,800,000 per year [39 Stat. 218, 50 Stat. 875–876].

Reconveyed Coos Bay Wagon Road grant lands in Coos and Douglas Counties, Oreg.—Up to 75 percent of the receipts of the United States from such lands may be paid to the counties. The amount actually paid shall be determined after appraising and assessing the lands and timber thereon. The same rate of taxes as is applied to similar private properties shall be applied to the assessed valuation. The funds shall be used for common schools, roads, highways, bridges, and port districts. The sums currently being paid to the counties amount to approximately $30,000 per year [53 Stat. 753–754].

Mineral lands.—37½ percent of the receipts in bonuses, royalties, and rentals under the Mineral Leasing Act, and rents and royalties from potash and potassium deposits are paid to the States and Alaska. The proceeds are to be used as the State or Territorial legislatures may prescribe for the construction and main-

tenance of roads, for the support of public schools or other public educational institutions. The sums currently being paid to the States and Alaska amount to approximately $20 million per year [30 U. S. C. 191, 275, 285, 286, 292].

Oil and gas lands, south half of Red River, Okla.—37½ percent of the oil and gas royalties from such lands shall be paid to the State in lieu of State and local taxes on Kiowa, Comanche, and Apache tribal funds. The proceeds are to be used by the State for roads and public schools. The sums currently being paid to the State amount to approximately $10,000 per year [42 Stat. 1448, 44 Stat. 740, 48 Stat. 1227 sec. 4].

Oil and gas lands added to the Navaho Indian Reservation in Utah.—37½ percent of the net royalties from such lands shall be paid to Utah. The proceeds shall be used for paying the tuition of Indian children in white schools, or building or maintaining roads across the lands, or for the benefit of Indians residing on the reservation [47 Stat. 1418].

Boulder Canyon project.—$600,000 of the revenues from the operation of the Boulder Canyon project are appropriated to Arizona and Nevada, each State receiving $300,000 [43 U. S. C. 617c, 618–618o].

Wildlife refuges under Migratory Bird Conservation Act.—25 percent of the net proceeds from the sale of wildlife refuge products and privileges are paid to the counties in which the refuges are located. The proceeds are to be expended for the benefit of public schools and roads. The sums currently being paid to the counties amount to approximately $450,000 per year [16 U. S. C. 715s].

Revenue from excise tax on firearms, shells, and cartridges.—A sum equal to the revenue from the excise tax on firearm, shell, and cartridge manufacture is distributed among the States. The proceeds are to be used for wildlife restoration, including management research. The sums currently being paid to the States amount to approximately $12 million per year [16 U. S. C. 669–669i].

Revenue from excise tax on fishing rods, etc.—A sum equal to the revenue from the excise tax on fishing rods, creels, reels, and artificial lures, baits, and flies is distributed among the States. The proceeds are to be used for fish restoration, including research into fish culture and management, formulation of restocking plans, acquisition of breeding places, etc. The sums currently being paid to the States amount to approximately $4,200,000 per year [16 U. S. C. 777–777k].

Alaska game licenses.—50 percent of the net proceeds from the sale of various game licenses and permits in Alaska are paid to the Territory. The proceeds may be expended through the Territorial school fund. The sums currently being paid to Alaska amount to approximately $89,000 per year [48 U. S. C. 199 (k)].

Federal Power Commission

National forests and public lands.—37½ percent of the funds derived from licenses issued by the Commission for the occupancy and use of such forests and lands shall be paid to the States in which they are located. The sums currently being paid amount to approximately $35,000 per year [16 U. S. C. 810].

Tennessee Valley Authority

Gross proceeds from the sale of power.—Payments shall be made to States and counties equal to 5 percent of the gross proceeds from the sale of power, in lieu of taxes on property, franchises and income. The payments shall be apportioned (*a*) one-half on the basis of power sales, and (*b*) one-half on the basis of the book value of power property. The payments to each State (including counties therein) shall not be less than the 2-year average of State and local ad valorem property taxes levied (immediately prior to acquisition) against power property purchased and operated by the TVA and against that portion of reservoir lands related to dams constructed by or on behalf of the United States and held or operated by the TVA and allocated to power. The minimum payment to any State is $10,000. The TVA shall pay directly to the counties sums (which will be deducted from the allocation to the State) equal to the 2-year average of county and other local ad valorem property taxes upon power property and reservoir lands allocable to power as determined above. The sums currently being paid to States and counties amount to approximately $3,600,000 per year [16 U. S. C. 831*l*].

D. Law on Payments in Lieu of Taxes

316. Payments to States and local units of sums based in some degree on property valuations (although not direct tax assessments) or the cost of public services rendered are now made under a variety of statutory enactments. The major use of this type of payment is found with respect to housing properties of the Housing and Home Finance Agency, but examples may also be found in the case of the Atomic Energy Commission, certain Department of Agriculture lands, and also in Department of the Interior holdings.

317. There are substantial similarities and substantial dissimilarities in the laws governing in-lieu payments. Generally, the amounts paid will be the sums agreed to by negotiation, although there can never be appeal from the determination by the Federal agency of the amount it is willing to pay. Most of the laws provide for giving attention to the taxes that would have been paid on the acquired property if it had remained in private ownership, the amount of services supplied by the municipality to the property, the amount of ordinary municipal services supplied by the property itself, the burdens cast or benefits conferred by the fact of Federal ownership of the property, etc. In a few instances provision is made for assessing the property in the same way as other private property and applying the same rates as those paid by private property or (in other instances) special rates.

318. At the present time, Federal payments in lieu of taxes are made as follows:[9]

Atomic Energy Commission

Property previously subject to taxation which has been acquired by the AEC.—Payments may be made by the Commission in amounts, at the times, and upon the terms the Commission deems appropriate, but the Commission shall be guided by the policy of not making payments in excess of the taxes which would have been payable for such property in the condition in which it was acquired, except in cases where special burdens have been cast upon the State or local government by activities of the Commission, the Manhattan Engineer District, or their agents. In any such case, any benefit accruing to the State or local government by reason of such activities shall be considered in determining the amount of the payment [42 U. S. C. 1809 (b)].

Department of Agriculture

(See also par. 313)

Lands acquired for certain public works.—Provision is made with respect to lands acquired in certain States for specified works designed to improve runoff and waterflow retardation, and soil erosion prevention. There shall be paid annually to the counties in which such lands are located a sum equal to 1 percent of the purchase price, or if not acquired by purchase, then 1 percent of their valuation at the time of acquisition [58 Stat. 905].

Superior National Forest lands in Minnesota.—There shall be paid to the State of Minnesota ¾ of 1 percent of the fair appraised value of Superior National Forest lands in Cook, Lake, and St. Louis Counties, Minn. The State shall pay the sums received to the counties involved in conformity with the fair appraised value of such lands located in each county. The fair appraised value of the lands shall be determined by the Secretary of Agriculture at 10-year intervals and his determination shall be conclusive and final. The sums currently being paid to the State amount to approximately $45,000 per year [16 U. S. C. 577g].

Farmers' Home Administration property.—There are two types of property held by the Farmers' Home Administration which are treated differently; (a) property held under the Bankhead-Jones Farm Tenant Act for tenant purchase loans and mortgage insurance (except property used solely for administrative purposes),

[9] Where the in-lieu payments are based solely on a fixed amount or percentage share of the revenues, those laws providing for the payments are discussed above in par. 313.

and (b) all other property held under the act. While property described under "a" above is subject to direct taxation like all other privately owned property provision is made whereby the Secretary of Agriculture may make payments in lieu of taxes on all other property [7 U. S. C. 1024].

Resettlement and rural rehabilitation projects.—Agreements may be entered into with a State or political subdivision or other taxing unit for payments in lieu of taxes on resettlement or rural rehabilitation projects for resettlement purposes constructed with funds allotted or transferred to the Resettlement Administration. Sums fixed in such agreements shall be based on the cost of the public or municipal services to be supplied for the benefit of such project or the persons residing on or occupying such premises, but taking into consideration the benefits to be derived by such State or subdivision or other taxing unit from such project. The sums currently being paid amount to approximately $2,500 per year [40 U. S. C. 432–433, 50 App. U. S. C. 1355 (d)].

Case-Wheeler Act lands.—Agreements may be entered into with a State or political subdivision or other taxing unit for payments in lieu of taxes on lands being prepared for irrigation and return to private ownership under the Case-Wheeler Act. Sums fixed in such agreements shall be based on the cost of the public or municipal services to be supplied for the benefit of such project or the persons residing on or occupying such premises, but taking into consideration the benefits to be derived by such State or subdivision or other taxing unit from such project [16 U. S. C. 590z–8].

Department of the Interior

(See also par. 313)

Columbia Basin project lands.—Agreements may be entered into with any State or political subdivision for payments in lieu of taxes with respect to any real property located on the Columbia Basin (Grand Coulee Dam) project. Payments are to be made out of funds derived from the leasing of lands. Sums fixed in the agreements shall not exceed the taxes that would be due if the property were not tax exempt [16 U. S. C. 835c–1].

Transitional in-lieu payments of $10,000 a year for 10 years are being made with respect to 8,350 acres of acquired lands on the Big Thompson project in Colorado [National Education Association, Status and Fiscal Significance of Federal Lands in the 11 Western States, 1950, p. 161].

Grand Teton National Park lands recently acquired.—There shall be paid to the State of Wyoming for 10 years after acquisition of privately owned lands and improvements acquired after March 15, 1943, a sum equal to the full amount of annual taxes last assessed thereon by public taxing units in the county where the property is located. For each succeeding fiscal year for 20 years there shall be paid a sum equal to such full amount less 5 percent. Total payments may not exceed 25 percent of the fees collected from visitors to the Grand Teton National Park and Yellowstone National Park. The sums so paid to the State shall be distributed to the counties where the lands acquired are located. Obligations currently incurred amount to approximately $26,000 a year [16 U. S. C. 406d–3.]

Reconveyed Coos Bay Wagon Road Grant Lands in Coos and Douglas counties, Oreg.—The lands and timber in such reconveyed tracts shall be appraised and then assessed as are other similar properties, and payments in lieu of taxes shall be computed by applying the same rate of taxes as is applied to similar private property. Such payments may not exceed 75 percent of the receipts by the United States from such lands. The funds shall be used for common schools, roads, highways, bridges, and port districts [53 Stat. 753–754].

Boulder Dam. (See par. 313.)

General Services Administration

Surplus real property.—Sums in lieu of taxes may be paid on account of real property declared surplus by taxpaying Government corporations, pursuant to the Surplus Property Act of 1944, where legal title remains in the corporation [40 U. S. C. 490 (a) (9)].

Housing and Home Finance Agency

Low-cost housing constructed by United States Housing Authority.—Agreements may be entered into to pay annual sums in lieu of taxes to any State or political subdivision. The amount paid shall not exceed the taxes that would be paid upon such property if it were not exempt [42 U. S. C. 1413 (c)].

Slum clearance and community development.—Agreements may be entered into with any State or local taxing authority with respect to such property for the payment of sums which shall approximate the taxes which would have been paid if it were not exempt from taxation [42 U. S. C. 1456 (c) (3)].

Defense housing, etc., erected under the Lanham Act during World War II.—Payments in lieu of taxes shall be paid with respect to real property and improvements used for defense housing, defense public works, etc., erected under the Lanham Act. The payments shall be made out of rentals in an amount which shall approximate the taxes which would be paid to the State or political subdivision if it were not tax exempt. Such allowance as shall be considered appropriate shall be made for expenditures by the Government for streets, utilities, and other public services to serve such property[42 U. S. C. 1546].

Housing in critical defense housing areas.—Payments in lieu of taxes shall be paid with respect to real property and improvements acquired under the Defense Housing and Community Facilities and Services Act of 1951 in critical defense housing areas held for residential purposes or for commercial purposes incident thereto, whether or not such property is or has been held in the exclusive jurisdiction of the United States. The payments shall be made out of rentals in an amount which shall approximate the taxes and special assessments which would be paid to the State or political subdivision if it were not tax exempt. Such allowance as shall be considered appropriate shall be made for expenditures by the Government for streets, utilities, and other public services to serve such property [42 U. S. C. 1592g].

Housing in isolated defense areas.—Payments in lieu of taxes may be made with respect to real property acquired under the Defense Housing and Community Facilities and Services Act of 1951 for housing and community facilities needed in connection with isolated defense installations, or the defense installation served thereby. The payments shall take into consideration other payments by the Federal Government to the State and local taxing authorities, the value of services furnished by such taxing authorities and the value of any service provided by the Federal Government [42 U. S. C. 1593b].

Slum clearance and low-cost housing projects.—Agreements may be entered into with any State or political subdivision for payments in lieu of taxes with respect to slum clearance and low-cost housing projects. The sums paid shall be based upon the cost of the services supplied for the benefit of the project or persons occupying such premises, but taking into consideration benefits derived by the State or subdivision from the project [40 U. S. C. 422–423].

Foreclosed housing at educational institutions.—Agreements may be entered into with any State or local taxing authority for payments in lieu of taxes with respect to housing at educational institutions on which loans made by the agency have been foreclosed [12 U. S. C. 1749a].

TENNESSEE VALLEY AUTHORITY

(See par. 313)

E. LAW ON TAXATION LIKE PRIVATE PROPERTY

321. The policy of permitting nondiscriminatory State and local taxation of Federal instrumentalities dates back to a statute enacted in 1864.[10] This statute permitted the taxation of the real estate of national banks. It is true that national bank property is not Federal property, but this property could not have been taxed in the absence of congressional authorization. This type of authorization has also been extended to certain other federally supervised banking and credit institutions. In addition, there are two broad categories of property actually owned by Federal agencies which the States and local units are also authorized to tax, namely real estate (usually held only temporarily) acquired by Federal lending agencies principally through foreclosure proceedings, and such commercial and industrial property as that held by the Reconstruction Finance Corporation.

[10] 13 Stat. 112.

The last-mentioned is by far the most important of all. In a few cases, the taxing authority extends to tangible personal property as well as real property.

322. At the present time, State and local taxation of Federal property, or the property of Federal instrumentalities, is authorized as follows:

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation.—The real property of the Commodity Credit Corporation shall be subject to State, Territorial and local taxation to the same extent according to its value as other real property [15 U. S. C. 713a–5].

Farm Credit Administration supervised lending agencies.—The real and tangible personal property of the Central Bank for Cooperatives, banks for cooperatives, the Production Credit Corporation, and production credit associations, the real property only of Federal and joint stock land banks, Federal Farm Mortgage Corporation, national farm loan associations, and Federal intermediate credit banks, shall be subject to State, Territorial and local taxation to the same extent as other similar property [12 U. S. C. 931, 933, 1020f (a), 1111, 1138c].

Farmers' Home Administration.—There are two types of property held by the Farmers Home Administration which are treated differently: (a) property held under the Bankhead-Jones Farm Tenant Act for tenant purchase loans and mortgage insurance (except property used solely for administrative purposes), and (b) all other property held under the act. While property described in "b" above is liable for payments in lieu of taxes, property in "a" is subject to direct taxation like other privately owned property [7 U. S. C. 1024].

Federal Farm Mortgage Corporation.—The real property of the Federal Farm Mortgage Corporation shall be subject to State, Territorial, and local taxation to the same extent according to its value as other real property is taxed [12 U. S. C. 1020f (a)].

DEPARTMENT OF THE INTERIOR

Columbia Basin (Grand Coulee Dam) project.—Any public lands acquired in connection with the Columbia Basin (Grand Coulee Dam) project shall be subject to legal assessment or taxation by any irrigation, reclamation, and conservancy district in the State of Washington in the same manner and to the same extent as privately owned lands [16 U. S. C. 835c–1].

DEPARTMENT OF JUSTICE

Alien Property (Office of).—Property transferred to the Office of Alien Property shall not because of such transfer be exempt from State or local tax laws as applied to such property. Taxes shall be paid to the same extent, as nearly as may be deemed practicable as though the property had not been transferred. Any tax exemption accorded to the Office of Alien Property by specific provision of existing law is not affected [50 App. U. S. C. 36].

FEDERAL CREDIT UNIONS

Real and tangible personal property.—The real and tangible personal property of Federal credit unions shall be subject to State, Territorial, and local taxation to the same extent as other similar property [12 U. S. C. 1768].

FEDERAL DEPOSIT INSURANCE CORPORATION

Real property.—The real property of the Federal Deposit Insurance Corporation shall be subject to State, Territorial, and local taxation to the same extent according to its value as other real property [12 U. S. C. 264 (p)].

FEDERAL HOME LOAN BANKS

Real property.—The real property of Federal home loan banks shall be subject to State, Territorial, and local taxation to the same extent according to its value as other real property [12 U. S. C. 1433].

FEDERAL RESERVE BANKS

Real property.—The real estate of Federal Reserve banks shall be subject to State and local taxes [12 U. S. C. 531].

Federal Savings and Loan Insurance Corporation

Real property.—The real property of the Federal Savings and Loan Insurance Corporation shall be subject to State and local taxation to the same extent according to its value as other real property [12 U. S. C. 1725 (e)].

Home Owners' Loan Corporation

Real property.—The real property of the Home Owners' Loan Corporation shall be subject to taxation to the same extent according to its value as other real property [12 U. S. C. 1463 (c)].

Housing and Home Finance Agency

Foreclosed insured property.—Real property acquired in connection with insurance under the National Housing Act loans for slum clearance and community development, and loans for housing at educational institutions shall be subject to State, Territorial, and local taxation to the same extent according to its value as other real property [12 U. S. C. 1706, 1714, 1749a, 42 U. S. C. 1456 (c) (3)].

National Agricultural Credit Corporations

Real property.—The real property of National Agricultural Credit Corporations shall be subject to State and local taxation to the same extent according to its value as other real property is taxed [12 U. S. C. 548 (d) (3), 1261].

National Banks

Real property.—The real property of national banks shall be subject to State and local taxation to the same extent according to its value as other real property [12 U. S. C. 548 (d) (3)].

Reconstruction Finance Corporation

Real property.—The real property of the Reconstruction Finance Corporation (as well as any public corporation wholly financed and managed by the Reconstruction Finance Corporation) shall be subject to special assessments for local improvements and shall be subject to State, Territorial and local taxation to the same extent according to its value as other real property. Personal property is specifically exempted [15 U. S. C. 694j (a) (6)].

Veterans' Administration

Foreclosed property.—Property acquired by the Veterans' Administration under the law with respect to loans to veterans shall not be exempt from State and local taxation by reason of its acquisition by the Veterans' Administration [38 U. S. C. 694j (a) (6)].

CHAPTER IV

THE PICTURE BY TYPE OF PROPERTY

A. Introduction

401. The purposes of this chapter are (*a*) to examine the present type of taxpayments, if any, made with respect to some 37 categories of property, (*b*) to review the factors indicating a continuance or change of the present treatment, and (*c*) to point out how each category would be treated under several bills now pending in Congress.

402. The extent of consideration given in the following text varies with the importance of each category, the amount of available information, and the character of the argument. Obviously, much more time and a canvass of the information available in each Federal agency would be necessary to bring out many situations which should be

reviewed here. An alphabetical system of treatment is used, together with some cross reference.

B. Categories of Property

AIRPORTS, AIR NAVIGATION AIDS, ETC.

411. There are numerous military airports operated by the United States Government, but (within the continental United States) there is only one civil airport so operated, namely, the Washington National Airport which is under the jurisdiction of the Civil Aeronautics Administration. In addition, the Forest Service of the Department of Agriculture maintains 67 landing fields in connection with its forest-fire fighting activities. The Civil Aeronautics Administration also establishes, operates, and maintains air navigation facilities along civil airways and at landing areas. All these properties are now exempt from State and local taxation, and there seems little disposition to tax them. The National Education Association study would continue their exemption.[1] The 1943 Treasury study made the suggestion that if any airports are permanently operated by the Federal Government, on a commercial basis, a local share of revenue might be justified.[2]

412. Under the Bureau of the Budget bill (sec. 103 (b)), full exemption would be given to federally owned airports maintained and operated by the Civil Aeronautics Administration, and (sec. 103 (d)) also to CAA aids to air navigation. The Lane bill makes no provision for excluding these properties from its requirements for in-lieu payments.

ALIEN PROPERTY (OFFICE OF)

416. Property transferred to the Office of Alien Property shall not, by reason of such transfer, be rendered exempt from State or local taxation.[3] Taxes shall be paid with respect to such property to the same extent, as nearly as may be deemed practicable as though the property had not been so transferred. However, any tax exemption accorded to the Office by specific provision of existing law is not affected.

ASSAY OFFICES, MINTS, BULLION DEPOSITORIES

421. Assay offices, mints, and bullion depositories are exempt from property taxes and in-lieu payments. There is almost universal acceptance of the principle that some types of properties such as those chiefly for local use or for certain general administrative purposes should be exempt from local taxation, and no in-lieu payments should be expected with reference to them. Included under these categories are assay offices, mints, and bullion depositories. A further point with respect to most of these types of properties is that they have long been in existence and adjustments to their tax-exemption status have long ago been made. The 1943 Treasury study would continue their exemption.[4] The Bureau of the Budget bill (sec. 103 (b)) would exclude these properties from any tax payments. The Lane bill would also exclude them.

[1] National Education Association: Status and Fiscal Significance of Federal Lands in the 11 Western States. 1950, p. 164.
[2] Federal, State, and Local Government Fiscal Relations, p. 285.
[3] 50 App. U. S. C. 36.
[4] Federal, State, and Local Government Fiscal Relations, p. 284.

ATOMIC ENERGY PROPERTY

426. The Atomic Energy Act of 1946 authorized payments in lieu of taxes on account of previously taxed property acquired by the Commission.[5] The law vests in the Commission authority to make such payments in amounts, at times, and upon terms, it may deem appropriate. However, the Commission is to be guided by the policy of not making payments in excess of the taxes which would have been payable for such property in the condition in which it was acquired, except in cases where special burdens have been cast upon the State or local government by activities of the Commission, the Manhattan Engineer District or their agents. In any such case, any benefit accruing to the State or local government by reason of such activities shall be considered in determining the amount of the payment.

427. Under the foregoing authority the Commission entered into an agreement with DuPage County, Ill., whereby the Commission would pay $13,225 in lieu of taxes to the county for each of the tax years 1948, 1949, 1950, and 1951. Pursuant to this agreement a payment of $13,225 for the tax year 1950 was made during the fiscal year ending June 30, 1952. Up to May 28, 1953, no other payments in lieu of taxes had been authorized by the Commission in any other instances.[6]

428. In addition to payments in lieu of taxes other payments have been made because of burdens imposed on particular areas. Further, the Commission itself also owns and operates whole communities. These activities have been described by the Commission as follows:

> You may also be interested in the arrangements the Commission has with the school districts at the AEC communities at Oak Ridge, Tenn., Los Alamos, N. Mex., and Richland, Wash., although these arrangements are not for grants-in-aid, revenue sharing, or payments in lieu of taxes. These communities are owned and operated by the Atomic Energy Commission and all costs of operation, except for schools at Richland and Los Alamos, are borne by the Commission. At Richland and Los Alamos, the schools are operated by regularly constituted school districts and receive State funds for their support. The AEC makes an annual payment to these school districts, supplementing the State funds, to assure a level of education deemed necessary for the recruitment and retention of the personnel needed for carrying out the AEC's activities in these areas. For the fiscal year 1952, the AEC paid $620,544 of the total cost of $1,794,724 for operation of the Richland schools, and $477,872 of the total of $826,872 for operation of the Los Alamos schools.
>
> The Oak Ridge schools are operated by the Anderson County Board of Education under a contract with the AEC whereby the AEC pays all the operating costs. For the fiscal year 1952, the AEC paid $1,961,578 pursuant to this arrangement.[7]

429. The Budget Bureau bill would repeal the special provision of law with respect to payments in lieu of taxes and make the property of the Commission subject to the new bill. Payments in lieu of taxes would be authorized under title I with respect to any property on which the Commission has previously made payments to the States or local units, as well as other real property acquired after the cutoff date (see pars. 831–837). No payments would be made on account of improvements added by the Commission subsequent to Federal acquisition except properties "used or held for commercial activities." The Commission in commenting on the Budget Bureau bill[8] stated

[5] 42 U. S. C. 1809 (b).
[6] Letter from the Commission to the House Committee on Interior and Insular Affairs, May 28, 1953.
[7] The same.
[8] The same.

that it had no objections to the provisions of title I of the bill, but observed that much of its property would be classified as "commercial or industrial property" and consequently exempt unless "used or held for commercial activities." The Commission expressed its uncertainty as to which if any of its properties would be regarded as "used or held for commercial activities." The provisions of title III relating to payments of special assessments for local improvements were found somewhat objectionable because it appears that local improvements could be made which would in fact be financed largely by the Federal Government but which might actually conflict with the desires and plans of the Federal Government for development of its own properties.

430. Atomic energy property is not included in the category of a defense production facility within the meaning of the Knowland defense facility production bill (see pars. 946–951) which proposes in-lieu payments on certain properties.

CEMETERIES

436. There are some 1,812 developed acres in national cemeteries, all of which are exempt from taxation. However, it has been pointed out in one report that in some instances these have been developed upon lands of high value for tax purposes and the resulting Federal immunity has affected local ability to furnish necessary governmental protection and service. It is concluded by that report that each such project should be studied, its cost in tax revenue losses to the local and State governments determined, the burden of extra local cost of service fixed, and the gains (direct and indirect) used as an offset in order that a fair in-lieu payment be agreed upon.[9] Both the Budget Bureau bill (section 103 (d)) and the Lane bill provide for their exemption. The Bureau of the Budget bill (sec. 104) does provide for declining payments over a 10-year transition period (see pars. 845–846) where the Federal Government has acquired property which had been on the tax rolls at the time of acquisition.

COMMERCIAL AND INDUSTRIAL PROPERTY

441. The Federal Government currently owns valuable pieces of property that may accurately be described as commercial or industrial. Most striking of course, and most important in recent years, have been the defense production facilities and properties associated with national defense. Then there are other properties such as wharves and docks, warehouses, certain office buildings, etc., which are usually thought of as commercial. In the absence of legislation enabling States and local units to tax these properties they remain exempt, notwithstanding the proprietary uses to which they are put.

442. The problem which flows from the ownership of such properties is intensified, when such properties, though Government owned, are leased by the United States to private operators for profit. Or when they were once on the taxrolls as private property and are currently being operated by the Government or a lessee private corporation, and performing substantially the same activity as they were when privately owned. Further problems have flowed from the fact

[9] National Association of Tax Administrators, Committee on Payments in Lieu of Taxes: Revenue Administration, 1945, p. 50.

that certain Government-owned properties were taxable under the Federal statutes when owned by one agency, and became exempt when transferred to another agency though continuing to perform exactly the same activity.

443. Numerous examples are available to illustrate the foregoing. During World War II, the United States obtained needed war materiel in (for purposes of this inquiry) three ways: (1) It contracted with private corporations for expanding facilities and allowed rapid tax amortization of such facilities; the title to such facilities remained in the private corporation and the property was taxable; (2) title to properties was taken in the name of the Defense Plant Corporation or the Reconstruction Finance Corporation and the properties were leased to private corporations; these properties by statute were subject to tax; (3) title to properties was taken by the United States and the properties were leased to private corporations; these properties were tax exempt. Though all the properties were for the same purpose, and the principal difference was in whom title lay, taxes were paid in cases 1 and 2 but not in case 3. The charge was often made that case 3 was frequently availed of to avoid taxes. Thus, one witness said:

> * * * in almost all cases, the executive and administrative branches of the Government took title in the name of the United States. This must have been for the sole purpose of evading local taxation in defiance of the expressed will of Congress.[10]

444. The affected political units having such commercial or industrial establishments within their borders generally strongly urge that they should be subject to local taxation. In the language of the last-quoted witness:

> When federally owned properties which are entitled to and which receive full local governmental services are acquired for proprietary or industrial purposes rather than purely governmental administrative functions, it is respectfully submitted that the Government should pay local ad valorem taxes or the equivalent.[11]

445. A danger to the entire free enterprise system is found in the exemption of Government-owned plants which are leased to private operators. As one witness explained:

> The Bohn Government plant in Adrian and Government plants in other areas are in direct competition with private industry. Private industry, paying their full share of local taxes for the support of police and fire departments, water systems, disposal systems, schools, etc., produce the same products that come out of the Government plants.
>
> All other factors being equal, the Government plants, by escaping taxes, could undersell private industry. With enough plants the Government, by compelling hundreds of local communities to shoulder all local tax responsibilities, could put private industry out of business. It presents a danger at the very roots of our free enterprise system of democratic government that should be discouraged, that should be fought every inch of the way by every local community with a Government industrial plant within its borders.[12]

446. The foregoing argument is denied at least in some cases. The Commissioner of Public Buildings of General Services Administration pointed out that in the properties which General Services

[10] Keeslinz, Francis V., Jr. Hearings (unpublished) before the House Committee on Public Lands, March 2, 1949, p. 63.
[11] The same, p. 64.
[12] Porter, Claude E. Hearings before a subcommittee of the House Committee on Government Operations, on H. R. 5605, July 20, 1953, p. 12.

Administration has taken over from the Reconstruction Finance Corporation, the lease rentals charged are high enough to include local taxes even though the local communities do not in fact benefit from the payments which go instead into the Federal Treasury. His statement is as follows:

> In those cases where GSA holds plants in the name of the United States the amount of the lease that we give includes what a private entrepreneur would have to pay for a plant that was owned by another private entrepreneur. That includes an amount for taxes which is not transferred to the local government. It comes to the Federal Government. And we do not object, and welcome the authority to make the payment of that portion of the lease that we segregated in the lease to us—to make that payment to the local taxing bodies.[13]

447. Further support for taxing this type of property is found within the Federal Government. Thus the Bureau of the Budget bill (sec. 101 (b) (4)) provides that properties used for commercial or industrial purposes should be liable for in-lieu payments in an amount determined by applying the average effective tax rate of the community to the value of the property including improvements made thereto and of tangible personal property added by the Federal Government. The amount determined for improvements and tangible personal property should not, however, exceed 10 times the tax equivalent on the property exclusive of Federal improvements and Federal tangible personal property. These provisions for in-lieu payments apply only to property acquired after the cutoff date (see par. 831–837), and where improvements or tangible personal property are in the nature of a replacement of property made prior to that cutoff date, only the excess value thereof shall be considered. None of the foregoing applies to properties of the Atomic Energy Commission (other than those used or held for commercial activities) nor to any Federal property on which commercial or industrial activities are carried on only occassionally or as a minor incident of activities which are not commercial or industrial.

448. "Industrial" and "commercial" under the Budget Bureau bill (sec. 3 (f)), refer to activities involving primarily, or to properties the ownership or use of which involves primarily, the process of mining, manufacture, fabrication, repair, generation of electrical energy, transportation, or any similar process, including storage, within or on such property, or the sale or resale, rent, or lease of commodities or the sale of services, including storage within or on such property.

449. Another bill not specifically sponsored by the Bureau of the Budget, was worked on by that agency in cooperation with Senator Taft; this latter bill was of more limited scope than that just discussed. It is S. 2473, introduced July 24, 1953 by Senator Knowland. This bill is designed to provide a continuing system for payments to States or local taxing units adversely affected by the Federal acquisition, ownership, or use of defense production facilities. It would authorize ad valorem tax payments in some cases and in-lieu payments in others. Direct ad valorem levies would be authorized on (1) defense-production facilities acquired since June 30, 1950, to protect the financial interest of the Federal Government in connection with loans or contracts of insurance or guaranty or contracts for procurement of national defense, (2) property leased or sold by conditional sale to taxable persons, and (3) defense production facilities which have been taxable

[13] Reynolds, W. E. Hearings before a Special Subcommittee of the House Committee on Government Operations, on H. R. 5605, July 20, 1953, p. 42.

since June 30, 1950, but which would not continue taxable if this consent were not given. In-lieu payments may be made for other defense production facilities acquired or constructed by the Federal Government since June 30, 1950, unless the facility would be tax exempt under laws of the State if in private ownership.

450. It is important to emphasize that this bill also provides for the taxation of tangible personal property. Thus, under this bill, if a defense production facility is manufacturing airplanes to which the United States has taken title because of a partial payment of the purchase price (even though the planes are not yet finished), such planes so long as they remain in an unfinished and undelivered state are subject to the local property tax. The reasoning behind this is that in many cases the Federal Government, under the terms of its procurement contracts, takes title to property which ordinarily would remain the property of the contractor and subject to the local tax.

451. The need for such a provision has been pointed out by the City Controller of Detroit. Addressing the National Association of Assessing Officers in 1952, he said:

* * * It was not enough that the finished and accepted product of the war contract was exempt from taxation; the problem was to sandbag local government into exemption of the inventory, the raw materials, the tools, the dies, the machinery, in fact everything that went into or was used to produce the finished product. Their efforts bore fruit—a new contract gimmick came into being—the partial-payment clause.

* * * * * * *

Let us assume, for the purposes of illustration, a small community with but 1 or 2 large industrial developments. Its industry is one engaged in peacetime production—its real estate and personal property including raw materials, machinery, tools, dies, etc., is taxable and contributes the major portion of the revenue required to support the community.

The two industrial developments are offered and accept defense contracts requiring new tools, dies, machinery, and raw materials. If the contracts contain the partial-payment clause and if the contracting officer decides to make a partial payment—all of the personal property will be alleged to be exempt and the community will be bankrupt. All of the services of Government must be furnished to the industries but the personal-property tax base is knocked galley west. In our scheme of government, was it contemplated that the existence of units of local government was to be contingent upon the whim or caprice of a contracting officer of the United States? [14]

452. The Tennessee Valley Authority has expressed a disagreement with the thought that the Federal Government should pay taxes on its commercial and industrial property. In commenting on the overall Budget Bureau bill, it said:

Section 101 (b) (4) provides for payments in the case of so-called commercial or industrial property based in part on the value of improvements made by the Federal Government. We question the desirability of this approach. We do not believe the Federal Government operates commercial or industrial property in the sense implied by this section. Where the Federal Government engages in activities resembling those conducted by private businesses, it generally does so because private enterprise was not in a position to provide the facilities needed. When the Federal Government constructs such facilities, State and local governments are not deprived of tax revenues which they would have received as a result of construction of similar facilities by private enterprise, for the reason that if the Federal Government had not constructed such facilities they would in all likelihood not have been constructed at all. Actually, such Federal projects normally result in substantial benefits to States and localities in which they are located. That these benefits usually exceed burdens is evidenced by the efforts which States and localities commonly exert to secure location of such projects

[14] Quoted in hearings before a Special Subcommittee of the House Committee on Government Operations, on H. R. 5605, July 20, 1953, pp. 26-27.

within their boundaries. In the light of these factors, we believe that payments based on revenue-sharing are more desirable than a system of payments based, even with the limitations written into section 101 (b) (4), on the average affective tax rate which would be applicable on similar but purely hypothetical improvements if such improvements had been constructed by private enterprise.[15]

453. Most local organizations currently support both the Bureau of the Budget bill and the Knowland defense production facilities bill, but they would support both even more enthusiastically if they carried no cutoff date or at least an earlier one (see pars. 831–837).

COMMODITY CREDIT CORPORATION

456. The Commodity Credit Corporation is a Government corporation which is engaged in buying, selling, lending, and other activities with respect to agricultural commodities, their products, foods, feeds, and fibers, for the purpose of stabilizing, supporting, and protecting farm income and prices. It also assists in the maintenance of balanced and adequate supplies of such commodities, and facilitates their orderly distribution. The Corporation makes available materials and facilities required in connection with the production and marketing of such commodities. It was predicted in January of 1954 that the Corporation's assets would total almost $5 billion by June 30, 1954, distributed as follows: Cash, net accounts, and notes receivable—$256 million; land, structures, and equipment (after depreciation)—$114 million; net loans—$2,022 million; net inventories—$2,586 million; other—$13 million; total—$4,990 million.

457. The property of the Commodity Credit Corporation, other than real property, is exempt from taxation. However, the law provides that the real property of the Corporation shall be subject to State, Territorial, and local taxation to the same extent according to its value as other real property.[16]

458. The Bureau of the Budget bill (sec. 508 (a)) would repeal this provision of law and subject the property of the Corporation to the general treatment provided in that bill. A particular problem, however, apparently arises from this proposed repeal so far as it affects grain storage facilities. This is discussed below.

459. As of March 1952, the Commodity Credit Corporation owned in excess of 120,000 grain-storage structures on numerous sites located throughout 31 States. These structures have been erected on real property leased to the Corporation. The structures are exempt from taxes.[17] The Bureau of the Budget bill (sec. 508 (a)) would repeal the section of the law under which Commodity Credit Corporation property (other than real property) is exempt from taxation. The Department of Agriculture recommended a change in the bill whereby this section should not be repealed. The language of the letter making this request is set forth below:

> These structures have been erected on real property leased to the Corporation and would appear to be "Federal tangible personal property" as defined in section 3 (e). These grain-storage structures are exempt from taxation under the provisions of section 5 of the act of March 8, 1938 (52 Stat. 108; 15 U. S. C. 713a–5). The provisions of this act were made applicable to the Commodity Credit Corporation, a Federal corporation, by section 6 of the Commodity Credit Corporation Charter Act (62 Stat. 1072; 15 U. S. C. 714d). Section 101 (a) * * * provides

[15] Letter from the TVA to the House Committee on Interior and Insular Affairs, September 6, 1951.
[16] 15 U. S. C. 713a–5.
[17] 15 U. S. C. 713a–5.

that payments shall be made on account of Federal property used or held for activities which serve primarily national or broad regional interests and which activities do not serve primarily the local public. The program of the Commodity Credit Corporation for the erection of grain-storage structures was undertaken in order to serve local needs for the storage of commodities and is temporary in nature. The program was authorized by section 4 (h) of the Commodity Credit Corporation Charter Act and was subject to the limitation that the authority shall not be utilized by the Corporation in order to provide storage facilities for any commodity "unless the Corporation determines that existing privately owned storage facilities for such commodity in the area concerned are not adequate." It, therefore, appears that payments in lieu of taxes on such grain-storage structures would not be authorized. However, we may reasonably expect to receive many requests from State and local governments for payments in lieu of taxes which could not be made because of the limitation that payments shall not be made if the property serves primarily the local public. Enactment of the bill in its present form will require this Department to expend administrative funds unnecessarily in handling such requests and may adversely affect relationships between the Department and State and local governments. We, therefore, recommend that the reference to the act of March 8, 1938, be deleted from the listing of repealed acts in section 508 (a) (1) and that the listing of exempt acts in section 508 (a) (2) include a reference to the act of March 8, 1938.[18]

CUSTOMHOUSES

461. Customhouses are now exempt from property taxes and in-lieu payments. According to the National Association of Tax Administrators' Committee on Payments in Lieu of Taxes, there is general acceptance of the principle that customhouses should not be subject to State and local property taxes or payments in lieu of taxes.[19] The 1943 Treasury study would also continue their exemption,[20] and so would the report of the Federal Real Estate Board.[21] The Bureau of the Budget bill and the Lane bill make no provision for taxing them. The position has been taken in some sources, however, that customhouses should be taxed. Defense of such a position has been based in part at least on simplicity of administration, the thought being that once exclusions from the general rule are made administrative difficulties will arise.[22]

FISH AND WILDLIFE SERVICE PROPERTIES

466. The present Fish and Wildlife Service dates from 1940, but its origins go back to 1871 and 1885. The central objective of the Service is to insure the conservation of the Nation's wild birds, mammals, fishes, and other forms of wildlife, both for their recreational and economic values. The Service has currently in operation some 92 stations for the production of fish and eggs for the propagation of commercial food and game fishes, and in addition operates 275 refuges, consisting of more than 18 million acres, operated for the conservation of migratory waterfowl and for the preservation and propagation of rare birds and wild animals. For the most part, fish and game reserves are located on land that has little value for agricultural purposes. Many of the larger reserves are in or adjacent to inaccessible and wasteland areas, such as marshes and swamps, desert plains, and rugged

[18] Letter from the Department of Agriculture to the House Committee on Interior and Insular Affairs, March 1952.
[19] National Association of Tax Administrators: Revenue Administration, 1945, pp 50–51; 1946, p. 43.
[20] Federal, State, and Local Government Fiscal Relations, p. 284.
[21] Federal Contributions to States and Local Governmental Units With Respect to Federally Owned Real Estate, 1943, pp. 15–16.
[22] See for example the testimony of Francis V. Keesling, Jr. Hearings (unpublished) before the House Committee on Public Lands, on H. R. 1356, March 2, 1949, p. 46.

mountains. The properties of the Service are tax-exempt, but Congress through the Migratory Bird Conservation Act has provided that 25 percent of the net proceeds from the sale of wildlife refuge products and privileges (surplus wildlife, timber, hay, etc.) are to be paid to the counties in which the refuges are located to be expended for the benefit of the public schools and roads.[23] Payments under the act currently amount to approximately $450,000 per year.

467. Congress has also provided that 50 percent of the net proceeds from the sale of various game licenses and permits in Alaska are to be paid to the Territory to be expended through the Territorial school fund.[24] Payments to Alaska in 1953 under this law amounted to $88,788.

468. The Congress concluded in 1937 that more than conservation was needed to remedy the dwindling wildlife species; restoration projects as well were needed. To that end, Congress decided that the States and the Federal Government should cooperate in a broad program not only to conserve the limited supply of wildlife, but to restore it to some semblance of its former-day abundance. To supply the Federal revenue needed, it provided that a sum equal to the revenue from the existing excise tax (no new tax was added) on the manufacture of firearms, shells, and cartridges should be used for State aid for wildlife restoration and management.[25] Subject to established maximums and minimums, each State receives its proportionate share on the basis of the land area and sale of hunting licenses. Currently the States are receiving about $12 million under this program.

469. Following the lead of the 1937 act with respect to wildlife restoration, the Congress in 1950 adopted similar legislation for fish restoration.[26] Again Federal aid was provided for the States to be financed by the then existing manufacturers' excise tax on fishing rods, creels, reels, and artificial lures, baits, and flies. The funds are used for fish restoration, including research into fish culture and management, formulation of restocking plans, acquisition of breeding places, etc. Subject to established minimums and maximums, each State receives its proportionate share on the basis of area and sale of fishing licenses. Currently the States are receiveing about $4 million per year.

470. A national organization of local officials concedes that fish and wildlife refuges should continue to be exempt from taxation or in lieu payments.[27] It does advocate, however, that when the removal of property from the tax rolls for refuges results in a serious local financial loss, 10-year declining transition payments should be made, with the proviso that thereafter permanent in lieu payments should be made on the basis of 50 percent.

471. The Federal Real Estate Board was also concerned in 1943 with the loss of revenue from acquired lands. To that end, it proposed:

> * * * As a protection to those local governments containing wildlife refuges during such periods as receipts are insignificant in amount, the Board also recommends that authority be granted to assure a minimum contribution with respect to these lands of three-fourths of 1 percent of the purchase price, or of the appraised value at date of acquisition in the case of lands acquired by donation or exchange.[28]

[23] 16 U. S. C. 715s.
[24] 48 U. S. C. 199 (k).
[25] 16 U. S. C. 669–669i.
[26] 16 U. S. C. 777–777k.
[27] National Association of County Officials: Why . . . 1953, p. 9.
[28] Federal Contributions to States and Local Governmental Units With Respect to Federally Owned Real Estate, p. 24.

472. The Bureau of the Budget bill (sec. 103 (c), 104) continues complete exemption of fish and wildlife refuges, except so far as provision is made for transition payments on property in general. (See pars. 841–846.) The Lane bill which provides for general in lieu payments on almost all Federal property includes fish and wildlife refuges within its provisions.

FLOOD CONTROL PROPERTY

476. River improvements designed to prevent floods date from a 1917 act of Congress providing for expenditures around and below Rock Island, Ill., on the Mississippi River. Since that time many hundreds of millions of dollars have been spent on dams, channel clearance and improvement, levees and other local protection works, storage reservoirs, and so forth. These works are generally performed by the Corps of Engineers and, locally, by the Tennessee Valley Authority. The properties in connection with flood control alone (that is, unrelated to power programs—see pars. 641–655) are in all cases exempt from taxation.

477. It is felt that, at least at times, these flood-control works have a national significance whose benefits extend beyond the particular area directly affected. There are times too when the flood-control works, including upstream land taken for reservoirs, will be taken from areas themselves entirely free of floods. In other words, the local units of government injured by the works are not the same areas which benefit from them. Because of this, it has been urged that a plan should be adopted by which the National Government in some cases would provide temporary relief from tax losses until such time as indirect benefits (if any) might place the local government on an even keel and, in other instances, permanent in lieu payments should force all parts of the country to bear a just portion of the burden created by a project of general worth and significance.[29] It has also been contended that so far as possible an effort should be made to tax flood-control property directly to the same extent as privately owned property rather than resort to tax-equivalent payments, or in lieu payments.[30]

478. Note should be made of the fact that there is a sharing of the revenues derived by the Corps of Engineers from lands acquired for flood-control purposes when the corps leases such lands.[31] The law provides that 75 percent of the moneys received from the leases shall be paid to the States in which the property is located, the money to be expended as the State legislatures shall direct for the benefit of public schools and public roads of the counties in which the property is located. Distributions are currently approximating $850,000.

479. Provision is also made whereby the Chief of Engineers may provide needed school facilities for dependents of persons employed on certain flood-control construction projects or enter into cooperative agreements with local agencies for the operation of such facilities, expansion of local facilities at Federal expense, and for contributions to cover the increased cost to local agencies of providing the facilities.[32]

[29] National Association of Tax Administrators: Report of Committee on Payments in Lieu of Taxes, in Revenue Administration, 1945, p. 51.
[30] National Association of Tax Administrators: Report of the Committee on Payments in Lieu of Taxes, in Revenue Administration, 1946, p. 43.
[31] 33 U. S. C. 701c–3.
[32] 60 Stat. 637–638, 642–643.

480. For purposes of comparison, it may be noted that the Bureau of Reclamation may make payments to local school districts where an undue burden is imposed by reason of the attendance of children of employees working on Bureau construction projects. Such payments shall be made out of funds available for the construction. Provision is made for a tuition charge of $25 per semester to be collected by the Bureau from each such child.[33]

481. It has been argued in opposition to payments in lieu of taxes on properties of the type under discussion here that many of the projects are initiated in response to requests of local interests and are authorized by the Congress upon the basis of detailed reports and recommendations made by the Corps of Engineers. In appropriate cases, estimates are made of the amount of taxes on property that may be removed from the tax rolls, and these estimates are taken into consideration both by the corps and the Congress when weighing the public benefits and the total cost of the project. Thus real property acquired for these projects is held pursuant to Federal laws enacted in the public interest and, in a very real sense, in the particular interest of the citizens and communities in the locality of each project. The initiation of most such projects depends upon a substantial assurance of local cooperation by the State and political subdivisions concerned. Local demand and the furnishing of these assurances to obtain many Federal activities necessitating the acquisition of real property may be taken as convincing evidence that communities do not consider loss of taxes important in comparison with concurrent benefits resulting from the projects. While there are a few instances where payment of the equivalent of local taxes may represent a reasonable contribution, the argument concludes, more often that such payment would be an unwarranted bounty to certain localities at the expense of the Federal taxpayer.

482. So far as the affected properties serve national or broad regional interests, in lieu payments would be made under the Bureau of the Budget bill. Payments on all flood-control properties would apparently be provided for under the Lane bill.

FORECLOSED PROPERTY

486. Under numerous loan and loan-guaranty programs of the United States, the Federal Government sometimes acquires title to real property to protect its financial interest in connection with its loans or contracts of insurance or guaranty. At the present time there are several laws which provide that the Federal agencies so acquiring property shall continue to pay taxes thereon. Among these are the following:

Banks for cooperatives (12 U. S. C. 1138c)
Central Bank for Cooperatives (12 U. S. C. 1138c)
Commodity Credit Corporation (15 U. S. C. 713a–5)
Farmers' Home Administration (7 U. S. C. 1024)
Federal and joint-stock land banks (12 U. S. C. 931, 933)
Federal credit unions (12 U. S. C. 1768)
Federal Deposit Insurance Corporation (12 U. S. C. 264 (p))
Federal Farm Mortgage Corporation (12 U. S. C. 1020f (a))
Federal home loan banks (12 U. S. C. 1433)
Federal intermediate credit banks (12 U. S. C. 1111)

[33] 43 U. S. C. 385a–385c.

Federal Savings and Loan Insurance Corporation (12 U. S. C. 1725 (e))
Home Owners Loan Corporation (12 U. S. C. 1463 (c))
Housing and Home Finance Agency (12 U. S. C. 1706, 1714, 1749a; 42 U. S. C. 1456 (c) (3))
National Agricultural Credit Corporations (12 U. S. C. 548 (d) (3), 1261)
National banks (12 U. S. C. 548 (d) (3))
National farm loan associations (12 U. S. C. 931, 933)
Production credit associations (12 U. S. C. 1138c)
Production Credit Corporation (12 U. S. C. 1138c)
Reconstruction Finance Corporation (15 U. S. C. 607)
Veterans' Administration (38 U. S. C. 694j (a) (6))

487. It is to be noted that under the law as written, in spite of the inclusion of many agencies subject to the supervision of the Farm Credit Administration for whom full payments are made with respect to foreclosed property, the Department of Agriculture has pointed out that there is one exception, namely "some foreclosed properties temporarily held under the Agricultural Marketing Act revolving fund." [34]

488. The Federal Real Estate Board in commenting on the power of credit agencies to pay taxes said:

> The operations of such lending agencies are in general similar to those of other credit agencies with which they are more or less in competition and which are subject to taxation; moreover, the ownership is of temporary character, and is therefore distinct from the general problem. So far as known to the board, the policy has occasioned no dissatisfaction on the part of either local governments or lending agencies. The practice is well established, and a change now would serve no useful purpose. Therefore, the board sees no reason for reconsidering the general policy on this class of real estate.[35]

489. The Budget Bureau bill proposes to continue and extend the present authority in some particulars. The bill (sec. 201) provides for taxation of properties acquired by the Federal Government through foreclosure of loans or loan guaranties while held pending disposition or until put to permanent use by the Federal Government. This group will include the property acquired by the Federal lending agencies which are now subject to taxation under the various statutes cited above governing these agencies. This provision will also apply to other agencies which may acquire property through foreclosure but do not now have the authority to pay taxes. This section provides further that those foreclosed properties which remain in Federal ownership and are converted to permanent use shall then be reclassified and become subject to payments, or become exempt, according to their permanent use.

490. The section also provides that foreclosed properties in the possession of the Federal Government shall be subjected to any special tax treatment accorded similar property in private ownership. This is intended to take care of situations such as those which might arise in connection with Rural Electrification Administration properties. In some taxing jurisdictions these properties may be exempt from property taxes or subject to special tax treatment in place of ordinary property taxes. This section would permit continuation of the same treatment while the property was held by the Federal Gov-

[34] Letter from the Department of Agriculture to the House Committee on Interior and Insular Affairs, May 1, 1953.
[35] Federal Contributions to States and Local Governments With Respect to Federally Owned Real Estate, 1943, p. 7.

ernment pending disposal. The Department of Agriculture, however, has made several comments on this provision as follows:

Section 201 would be applicable to foreclosed properties acquired by the Rural Electrification Administration, whether operated by the REA or leased to another for operation pending their disposition. Pursuant to section 7 of the Rural Electrification Act of 1936 such foreclosed properties may not be operated or leased by the Government for more than 5 years after acquisition. The proviso appearing on page 23, lines 17–23 inclusive, in subsection (b) of section 201, if liberally construed, indicates, we believe, an intent to preserve the prior tax status of such property. However, it must be recognized that this special tax status, in many places, attaches by reason of its prior ownership or the purpose to which it was directed, rather than the type of property involved. The language of the proviso does not recognize this distinction. It merely requires that property acquired by the Federal Government to protect its financial interest in connection with loans shall be accorded the same special tax treatment accorded to other similar property. While this language may be interpreted liberally to entitle the Federal Government to the special tax treatment accorded to the property involved while in the hands of former owners, there is a danger of narrower interpretation which would subject utility property taken over by the Government to the tax treatment accorded to utility property generally, i. e., that owned by commercial utilities, rather than to the special tax treatment accorded such property when owned by public or cooperative nonprofit agencies. Such treatment would result in disparity of taxation. It would place the Federal Government and persons receiving service from foreclosed rural electric facilities in a less advantageous position taxwise than the operators of and persons receiving service from unforeclosed properties financed by the Federal Government. Such treatment would be contrary to the State public policy which motivated the granting of special tax treatment to these properties, involving recognition of the purpose to which they were devoted. In some instance, it would mean the taxation for the first time of properties which had previously been tax-exempt. To avoid such result, we recommend that on page 23, the following be inserted in line 21 after the word "accorded": "to such property prior to its acquisition by the Federal Government or." [36]

491. The Veterans' Administration has also commented to the following effect:

Title II of the bill grants authority to State and local governments to tax property acquired by the Federal Government to protect its financial interests in connection with loans or contracts of insurance or guaranty, while held pending disposition or until put to permanent use by the Federal Government. In view of the definition set forth in subsection 3 (d) of the proposed act, it would appear that this authority is limited to property the title to which is vested in the Federal Government. This definition does not include the interest in real property acquired by the Administrator of Veterans' Affairs in those States where the successful bidder at a foreclosure sale does not acquire title but a mere certificate of sale. In those States the Veterans' Administration does not acquire title to such real property until the expiration of the redemption period. Under present law, the Veterans' Administration has authority to pay taxes, assessments, and other charges on such property. The absence of authority in H. R. 5223 to make such payments as they become due would result in the accruing of penalties and penalty interest against such property during the period in which the Administrator does not have title thereto. When title to the property is ultimately acquired, the Veterans' Administration could, pursuant to sections 201 (b), 202 (a), and 301 (c) of the bill, pay the penalties and penalty interest on the taxes and special assessments on such property, if it were determined that such payments were in the interest of the Federal Government. In this connection, it is presumed that in such cases it is intended to also authorize the payment of the delinquent taxes and assessments upon which the penalties and penalty interest are predicated. It appears safe to assume that the Veterans' Administration would pay these delinquent taxes and assessments and penalties and penalty interest in order to avoid substantial handicap in disposing of the properties concerned. However, despite the existence of authority ultimately to make such payments, enactment of the bill might and probably would cause substantial financial loss to the Government as well as extensive administrative difficulty in

[36] Letter from the Department of Agriculture to the House Committee on Interior and Insular Affairs, March 1952.

dealing with real property of this type. In addition it would require administration of this aspect of the loan guaranty program under two separate systems in view of the definition of "State" in section 3 (i) and the partial repeal of section 509 of the Servicemen's Readjustment Act by section 508 (a) of the bill.

Section 301 (a) of H. R. 5223 limits the special assessments which may be levied against Federal real property to those special assessments for local improvements authorized after the effective date of the act and to those outstanding special assessments against property acquired by the Federal Government after the effective date of the act. Under that section, payment of a special assessment would not be permitted, for example, where it was authorized prior to the effective date of the act and the property acquired by the Government prior to that date. In connection with property acquired by the Veterans' Administration pursuant to its loan guaranty program, it is believed that the interest of the Government would require that the Veterans' Administration be permitted to pay all special assessments on all properties in order to avoid difficulties in disposing of such properties.

In view of the fact that existing law accomplishes the same basic purpose as that sought by the bill with respect to loan guaranty properties and in addition avoids the administrative difficulties and financial losses that would probably result to the Government in the event of enactment of the subject proposal, it is recommended that lines 23 and 24, page 38, and lines 1 and 2, page 39 of the bill be deleted, and that a provision be added to the bill reading substantially as follows:

> "Nothing in this act shall be construed to modify or repeal section 509 of the Servicemen's Readjustment Act of 1944 (38 U. S. C. 694j), as now or hereafter amended."

In the event the foregoing recommendation is not adopted, then, as an alternative, it is strongly urged that the bill be amended to permit the payment of taxes and assessments on real property of this class before title to the property is vested in the Veterans' Administration, as well as all assessments on property title to which is acquired by the Veterans' Administration pursuant to its loan guaranty operations.[37]

492. The Lane bill by its very nature includes all foreclosed property as subject to taxpayments. The special Treasury committee which reported in 1943 concluded that it was reasonable to retain this property on the tax rolls during temporary Federal holding.[38]

GOVERNMENT CORPORATIONS AND INSTRUMENTALITIES

496. The property of Government Corporations is exempt from State and local taxation in the absence of statutory repeal of the exemption by Congress. However, existing laws with respect to certain Government Corporations, agencies or instrumentalities, make their real property (sometimes tangible personal property as well) subject to State and local taxation. It may be noted that in some cases the only time some Government Corporations would be holding real property would be on the occasion of a foreclosure of a loan (see also pars. 486–492). Citations to existing laws authorizing taxation of the property of Government Corporations are set forth below. Agencies bearing an asterisk (*) to the left also pay taxes on tangible personal property as well as real property.

*Banks for cooperatives (12 U. S. C. 1138c)
*Central Bank for Cooperatives (12 U. S. C. 1138c)
Commodity Credit Corporation (15 U. S. C. 713a–5)
Federal and joint stock land banks (12 U. S. C. 931, 933)
Federal Farm Mortgage Corporation (12 U. S. C. 1020f (a))
Farmers Home Administration (7 U. S. C. 1024)
Federal Reserve banks (12 U. S. C. 531)
Federal Deposit Insurance Corporation (12 U. S. C. 264 (p))

*These corporations also pay taxes on personal property.

[37] Letter from the Veterans' Administration to the House Committee on Interior and Insular Affairs, October 25, 1951.

[38] Federal, State, and Local Government Fiscal Relations, p. 282.

*Federal credit unions (12 U. S. C. 1768)
Federal intermediate credit banks (12 U. S. C. 1111)
Federal Savings and Loan Insurance Corporation (12 U. S. C. 1725 (e))
Home Owners Loan Corporation (12 U. S. C. 1463 (c))
Federal home loan banks (12 U. S. C. 1433)
National Agricultural Credit Corporations (12 U. S. C. 548 (d) (3), 1261)
National banks (12 U. S. C. 548 (d) (3))
National farm loan associations (12 U. S. C. 931, 933)
Reconstruction Finance Corporation (15 U. S. C. 607)
*Production credit associations (12 U. S. C. 1138c)
*Production Credit Corporation (12 U. S. C. 1138c)

497. The Bureau of the Budget bill (sec. 3) includes all Corporations subject now or hereafter to the provisions of title I of the Government Corporation Control Act (which includes a long list of wholly owned Government Corporations). The properties of these agencies serving national or broad regional interests will be subject to the same provisions as properties held directly by the Government itself.

498. The Bureau of the Budget bill (sec. 508) repeals the provisions of law noted above so far as applicable to the following wholly owned Government Corporations: Banks for Cooperatives, the Central Bank for Cooperatives, the Commodity Credit Corporation, the Federal Farm Mortgage Corporation, the Farmers' Home Administration, Federal Intermediate Credit Banks, Federal Savings and Loan Insurance Corporation, the Home Owners Loan Corporation, Production Credit Corporation, Production Credit Associations, and the Reconstruction Finance Corporation. The tax payments of these Corporations would be controlled by the proposed new act. The other organizations are unaffected by the bill.

GRAZING LANDS

501. The Taylor Grazing Act of 1934 as amended [39] brought virtually all remaining Federal land (outside of Alaska) under definite management by the Federal Government. It provided for the creation of grazing districts, made provision for improvement of the range, authorized the issuance of permits or licenses to livestock operators, the collection of grazing fees, and prescribed the numbers of livestock and the season during which they could be grazed.

502. As of 1949, about 305 million acres of Federal land were used for grazing. This is nearly three-fourths of all federally owned lands in the States. Of the 305 million acres, 230 million were primarily for grazing, while grazing was supplementary on the remaining 75 million acres. Grazing under leases or permits took place on 290 million acres and grazing under free use or trespass took place on 15 million acres. Of the 305 million acres of Federal land grazed, about 261 million acres were open and bushland, and 44 million acres were woodland.[40] Grazing leases and permits are issued by the Forest Service, the Bureau of Land Management, Soil Conservation Service, Fish and Wildlife Service, the National Park Service, and miscellaneous other agencies.[41] Revenues from leases and permits on Federal land in 1949 totaled approximately $8.1 million.[42]

*These corporations also pay taxes on personal property.
[39] 43 U. S. C. 315-315o.
[40] The statistics in this paragraph are taken from R. D. Davidson: Federal and State Rural Lands, 1950, pp. 21-22 (Department of Agriculture Circular No. 909).
[41] The same, p. 25.
[42] The same, p. 38.

503. Under the law as presently written, grazing lands are exempt from local taxation and no in-lieu payments are made, but (1) 12½ percent of the grazing fee receipts from section 3 permits for lands within grazing districts are paid to the States, and (2) 50 percent of the grazing fee receipts from section 15 leases of public lands outside grazing districts are likewise paid to the States.[43] In both cases, the moneys received by the States shall be expended in such manner as the State legislature may prescribe for the benefit of the counties in which the lands are located. It may also be noted that of the fees received from grazing districts on Indian lands ceded to the United States, 33⅓ percent are paid to the States in which the lands are located to be expended as the legislatures may prescribe for the benefit of the public schools and public roads of the counties in which such grazing lands are located.[44]

504. The States currently are getting about $177,500 from the lands within grazing districts, $200,000 a year from public domain lands outside grazing districts and around only $350 a year from the grazing districts on Indian lands ceded to the United States.

505. It seems to be agreed that the sums paid to the counties with respect to the grazing lands is small. However, it is clear that these lands are used predominately by the livestock industry, and, it is argued, if the States or counties should receive additional sums, they should be obtained through additional fees from the users. The national interest is quite small and additional burdens should not be cast upon the Federal taxpayer in order to provide greater contributions.

506. Both the Budget Bureau bill and the Lane bill leave undisturbed the present revenue-sharing statutes, but the Lane bill presumably would also provide for in-lieu payments.

HOSPITALS, PUBLIC-HEALTH FACILITIES, ETC.

511. Federal hospitals are maintained by the military, the Veterans' Administration, Bureau of Indian Affairs, and the Public Health Service. The latter has 13 general hospitals, 2 tuberculosis hospitals, 1 leprosarium, and 2 neuropsychiatric hospitals. The Bureau of Indian Affairs has 43 hospitals, sanatoriums, and medical centers. It is estimated that as of June 30, 1954, the Veterans' Administration will have in operation 174 hospitals and domiciliaries, and 70 outpatient clinics. Both the Army and the Navy have numerous hospitals, medical centers, and dispensaries. All of these are exempt from taxes and in-lieu payments.

512. Proposals for taxation or in-lieu payments with respect to Federal property do not usually include hospital property within their terms. However, the committee on payments in lieu of taxes of the National Association of Tax Administrators reported in 1945 that it was its belief that in certain cases hospitals (and similar properties) have created tax losses which are not always equitable as a local contribution. It is argued that they (along with other properties) have sometimes been developed upon lands of high value for tax purposes, and the resulting Federal immunity has affected local ability to furnish necessary governmental protection and service. The argument is

[43] 43 U. S. C. 315b, 315i, 315m.
[44] 43 U. S. C. 315j.

made that each project should be studied, its cost in tax revenue loss to the local and State government determined, the burden of extra local cost of service fixed, and the gains, direct and indirect, to local and State governments used as an offset so that a fair in-lieu payment could be agreed upon.[45]

513. The single answer which satisfies most people in this connection is that even if a hospital is privately owned, so long as it is conducted for eleemosynary purposes, it is tax-exempt under State laws. It is exempt even though all the factors set forth in favor of in-lieu payments by the Federal Government are present. It is concluded then that if the States and local units are prepared to exempt such property when privately owned, it seems rather incongruous to assert a right to tax when federally owned. The 1943 Treasury study concluded that in spite of the fact that some of the Federal hospital properties may be construed as of doubtful benefit to the local areas within which they are situated, the property tax loss is normally not significant, and no case for payments was apparent.[46]

514. The Budget Bureau bill (sec. 103 (a)) provides that if hospitals, dispensaries, outpatient clinics, home for the aged, etc., are exempt from taxes when privately held, then Federal hospitals shall likewise be exempt. However, if they are not exempt under the State law, then property newly acquired for Federal purposes shall be subject to transition payments over a 10-year period if property is removed from taxable ownership (secs. 103 (d), 104). For a full discussion of transition payments, see paragraphs 841–846. The Lane bill exempts hospitals (sec. 11).

HOUSING

516. Various agencies of the Federal Government provide housing, including the Housing and Home Finance Agency, the Department of Defense, and the Veterans' Administration. Various Federal credit agencies may acquire housing properties as a result of foreclosure proceedings.

517. At the present time, in-lieu payments are made for housing properties of the Housing and Home Finance Agency, and regular taxes are paid on the foreclosed properties of credit agencies. Housing facilities provided by the Department of Defense and the Veterans' Administration are tax-exempt and free of in-lieu payments.

518. The Housing and Home Finance Agency was established to provide a single permanent agency responsible for the principal housing programs and functions of the Federal Government. The various programs of the agency involving payments in lieu of taxes include federally owned low-rent public housing, public war and defense housing, veterans reuse housing, and subsistence homesteads and Greentowns (in final stages of liquidation). Each of these will be discussed briefly below.

1. Low-rent housing

519. Low-rent housing is intended for low-income families from the slums who cannot afford to pay the rents charged by private enterprise for decent, sanitary housing. Low-rent public housing projects are managed either by local housing authorities or by the Federal Govern-

[45] National Association of Tax Administrators: Revenue Administration, 1945, p. 50.
[46] Federal, State, and Local Government Fiscal Relations. p. 285.

ment. Those subject to Federal management are under the jurisdiction of the Housing and Home Finance Agency. They were constructed under various programs and legislation: National Industrial Recovery Act of 1933, United States Housing Act of 1937 and its 1940 amendment, and the Housing Act of 1949. Also administered by the Agency as part of its low-rent housing program are some farm-labor camps built by the Department of Agriculture, 1936–39, and now used to house migratory agricultural workers. Most of these camps have been sold to local housing authorities under a contract which provides that full title will not pass until the end of a 20-year period; 36 of the 39 camps had been sold by June 30, 1953. The value of land, structures, and equipment (after allowance of depreciation and allowance for losses on disposition) amounted to $159 million as of June 30, 1953, compared with $192 million on June 30, 1952, and an estimated $90 million June 30, 1954.

520. By a 1936 Act, provision was made for payments in lieu of taxes for projects theretofore constructed by the Federal Emergency Administration of Public Works under the National Industrial Recovery Act, or thereafter constructed by the Administration. Under the law, upon request of the State or local subdivision, sums could be paid based upon the cost of the public or municipal services to be supplied for the benefit of the project or the persons residing on or occupying the premises, but taking into consideration the benefits to be derived by such State or subdivision from the project.[47] A different provision, however, was enacted for in-lieu payments for projects constructed under the United States Housing Act. It simply provided for the Authority's entering into agreements to pay annual sums in lieu of taxes to any State or political subdivision. The amount paid was not to exceed the taxes that would be paid upon the property if it were not exempt.[48]

521. In practical operation it appears that payments have in fact become equal to an arbitrary 10 percent of shelter rents, thus conforming Federal in-lieu payments with payments made by local housing authority projects under the Housing Act of 1949.[49] Generally speaking the payments amount to one-fourth or one-fifth of full real property taxes.

522. Federal payments in lieu of taxes on low-rent housing amounted to $1,295,954 in 1952.[50]

2. Emergency housing

523. The remaining types of projects operated by the Housing and Home Finance Agency are all of an emergency type, and it is the understanding that the Government will divest itself of these properties after the need has been met. The three types here to be noted are the public war housing program, the veterans reuse program, and the subsistence homesteads and Greentown programs.

(a) Public War Housing

524. The public war housing program operates under two separate principal acts, the Lanham Act (as amended) and the Defense Hous-

[47] 40 U. S. C. 422–423.
[48] 42 U. S. C. 1413 (c).
[49] 42 U. S. C. 1410 (h).
[50] Letter from the Housing and Home Finance Agency to the House Committee on Interior and Insular Affairs, May 13, 1953.

ing and Community Facilities and Services Act of 1951. Under the Lanham Act, provision was made for permanent and temporary accommodations for war workers and military personnel in defense production areas and at military installations. About one-third of the original program is still in use and serves the needs of veterans, servicemen and their families, and certain defense workers, pending disposition in accordance with law. The Housing Act of 1950 (amending the Lanham Act) authorized the transfer under certain conditions of (1) temporary projects to local public agencies; and (2) permanent projects to local public housing agencies for operation as low-rent housing. The second of the principal acts, the Defense Housing and Community Facilities and Services Act of 1951, provided for meeting temporary housing needs in critical defense areas. Total expenditures under this latter building program (which terminates June 30, 1954) will finally total about $65,500,000. As of June 30, 1955, the total estimated development cost of the public war housing program, after deducting net transfers of assets to other agencies and programs, will amount to $1,475 million. The original program amounted to 626,000 units, and on December 31, 1953, there were 212,356 units left. The estimated book value of the remaining housing program projects as of June 30, 1954, will be about $692 million, compared with $998 million on June 30, 1952, and $853 million on June 30, 1953.

525. Provision is made in both acts (as amended)[51] for payments out of rentals in lieu of taxes. The payments are required to approximate the taxes (and special assessments for projects operated under the 1951 act)[52] which would be paid upon such property if it were not exempt from taxation, with such allowances as may be considered to be appropriate for expenditures by the United States for streets, utilities, or other public services to serve such property. It is to be noted that the 1951 act also makes specific provision for payments in lieu of taxes for housing and communication facilities needed in connection with isolated defense installations, or the defense installations served thereby.[53] Concerning this last-mentioned provision, the Associate General Counsel of the Housing and Home Finance Agency has said:

> The Administrator's power to make payments in lieu of taxes extends both to property under his jurisdiction and to the defense installation under the jurisdiction of another Federal agency. * * * Moreover, such annual payments may be made—and this is a new concept in this type of legislation—to local governments in which no part of the federally owned property is located. The test of eligibility for such annual payments is the extent and character of the community services rendered by a local public agency with respect to the employees of the Federal defense installation and their families.[54]

526. In determining sums paid under the 1951 program, consideration is also to be given for other payments by the Federal Government to the States and local taxing authorities, as well as the value of services furnished by the taxing authorities and the value of any service provided by the Federal Government.[55]

527. Total payments by the Housing and Home Finance Agency for public war and defense housing in the fiscal year 1952 amounted to $14,914,602.[56]

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[51] 42 U. S. C. 1546, 1592g, 1593 (b).
[52] 42 U. S. C. 1592g.
[53] 42 U. S. C. 1593 (b).
[54] Guandolo, Joseph: Payments to Local Governments in Lieu of Taxes, p. 22. (Mimeographed.)
[55] 42 U. S. C. 1592g.
[56] Letter from the Housing and Home Finance Agency to the House Committee on Interior and Insular Affairs, May 13, 1953.

(b) *Veterans reuse housing*

528. Turning now to the veterans reuse housing program, the Public Housing Administration allotted $422.7 million (under title V of the Lanham Act) to alleviate the housing difficulties of servicemen veterans, and their families attending educational institutions. This was done through the relocation and reuse of surplus Federal structures. Only two of these projects are now federally managed, all the remainder being managed locally.[57] The table below shows the number of units in 1953 and estimates for 1954–55.

	1953	1954	1955
Average number of active units:			
Federally operated	1,680	1,676	553
Locally operated	22,872	15,852	11,600

The value of the program's land, structures, and equipment (original cost basis) as of June 30, 1954, is estimated to be about $13.9 million. No specific statutory authority has been found for payments in lieu of taxes for the projects, although it appears that payments totaling $160,865 were made on account of such projects in 1952.[58]

(c) *Subsistence homesteads and Greentowns*

529. Finally, the agency has under its jurisdiction the resettlement or rural-rehabilitation projects constructed under the National Industrial Recovery Act and the Emergency Relief Appropriation Act of 1935. The original investment in almost 50,000 dwelling units was approximately $90 million. On these it also makes payments based on agreements entered into which take into consideration the cost of the public or municipal services supplied by the State or local unit, but also giving consideration to the benefits derived by the State or local unit from the project.[59] Payments with respect to these projects totaled $367,601 in 1952.[60] The projects are in the final stages of liquidation. As of June 30, 1953, there remained under management the commercial property of 2 Greentown projects, together with 46 rural farm dwellings and 6,485 acres of vacant land. In addition there were nine subsistence homestead units under lease and purchase contracts. The value of land, structures, and equipment (after depreciation and allowance for disposition losses) which totaled $17.7 million at the end of 1952, and $2.7 million by the end of 1953, will fall to $22,500 by the end of 1954.

3. Property of lending or insuring agencies

530. Notice may also be taken of the fact that the laws regulating lending or insuring by Federal agencies with respect to housing provide for the taxation of the property of such agencies. This of course means particularly that property acquired to protect the financial interest of the agency in connection with its loans or contracts of insurance or guaranty continue to be subject to local taxation. This

[57] The Budget of the United States, 1955, p. 314.
[58] Letter from the Housing and Home Finance Agency to the House Committee on Interior and Insular Affairs, May 13, 1953.
[59] 40 U. S. C. 432–433.
[60] Letter from the Housing and Home Finance Agency to the House Committee on Interior and Insular Affairs, May 13, 1953.

power of taxation is set forth in the laws regulating the Housing and Home Finance Agency (insurance under the National Housing Act,[61] loans for slum clearance and community development,[62] loans for housing at educational institutions),[63] Federal home loan banks,[64] Home Owners' Loan Corporations,[65] and the Federal Savings and Loan Insurance Corporation.[66]

4. Proposals for changes in the law

531. There appears to be no disposition in any circles for changing the laws with respect to granting the consent of the United States to State and local taxation of the properties of certain lending agencies. (See pars. 486–492.) However, some objections have been raised to certain features of the laws providing for payments in lieu of taxes and also to the failure to provide any payments whatsoever for certain housing properties owned by the United States.

532. The committee on payments in lieu of taxes of the National Association of Tax Administrators has contended that public housing, rural resettlement, and slum clearance projects should all be taxed to the same extent as privately owned property, and only when such taxation is impossible or impractical should resort be had to tax-equivalent payments or to payments in lieu of taxes.[67]

533. With respect to federally owned low-rent housing, there is some debate as to whether this should be subject to full tax-equivalent payments or continue with the arbitrary payment of 10 percent of shelter rents. The 1943 Treasury study agreed that low-rent housing, because of its social objectives, should make payments in lieu of taxes based on ability to pay as reflected in rentals charged.[68] It has been argued that tax-equivalent payments might be an obstacle to the later disposition of these properties to non-Federal owners.[69] Also it is felt that it might be just as well to have the same kind of payments made on the Federal housing projects as is made on local housing authority projects.[70] The Bureau of the Budget followed this line of reasoning in proposing to leave the present arrangement in effect, and thus excluding these properties from its bill (sec. 3 (d) (2), 508).[71]

534. There appears to be fairly general acceptance of in-lieu payments with respect to public war-housing properties, and the recommendation has been made that continuance of the present practice is justified.[72]

535. Objection is raised, however, when these properties are transferred (as they have sometimes been) to the military departments and to other Federal agencies.[73] This objection stems of course from the fact that housing owned by the military departments are tax

[61] 12 U. S. C. 1706b, 1714.
[62] 42 U. S. C. 1456 (c) (3).
[63] 12 U. S. C. 1749a.
[64] 12 U. S. C. 1433.
[65] 12 U. S. C. 1463 (c).
[66] 12 U. S. C. 1725 (e).
[67] National Association of Tax Administrators: Revenue Administration, 1946, p. 43.
[68] Federal, State, and Local Government Fiscal Relations, p. 292.
[69] National Education Association: Status and Fiscal Significance of Federal Land Holdings in the Eleven Western States, 1950, p. 170.
[70] The same.
[71] U. S. Bureau of the Budget: Executive Communication No. 722, Regarding Payments in Lieu of Taxes, Aug. 16, 1951, pp. 4, 7.
[72] National Education Association: Status and Fiscal Significance of Federal Land Holdings in the Eleven Western States, 1950, pp. 169–170.
[73] The same, p. 170.

exempt and no tax-equivalent payments are made. Thus while tax-equivalent payments will be made with respect to housing projects held by the Housing and Home Finance Agency, such payments stop when the property is transferred.

536. Throughout the previous discussion, occasional reference has been made to the fact that housing under the jurisdiction of the Military Establishment has been exempt from taxation, whether located on or off military posts and reservations. For those persons who believe in the traditional exemption which has been accorded to military property, there is little more that need be said with respect to housing which is essential quartering of military personnel. On the other hand, if one believes that military property in general should be subject to some payment then it seems clear that housing on military posts and reservations should be treated in the same way as other military property (see pars. 561–567), while housing located off military posts and reservations should be treated in the same way as other public housing.

537. It may be well at this point to indicate a justification in the different treatment provided for in-lieu payments on public war housing on the one hand and, for example, low-rent housing on the other. It will be recalled that with respect to low-rent housing there is general authority to make payments in lieu of taxes which has in operation resolved itself into payment of 10 percent of the shelter rents. On the other hand, payments with respect to war housing are to approximate the taxes which would have been paid if the property had not been tax exempt. Such different treatment may be justified on the following grounds: (1) Whereas low-rent housing and slum clearance are designed to serve people who have lived in a community and to whom the community has been furnishing services, war-housing projects are constructed to serve immigrants whose presence adds new burdens to the community; (2) low-rent housing and slum clearance projects are designed to serve persons of low income, while war-housing projects normally serve persons who have always contributed their share of the tax burden; (3) low-rent housing and slum-clearance projects are designed to serve a local purpose, while war housing is designed to serve a national purpose; (4) low-rent housing and slum clearance could not exist without some form of subsidy which is not true of war housing.[74]

538. The Budget Bureau bill (sec. 102) continues essentially the present provisions [75] for the resettlement and Lanham housing properties. Further, it extends its provisions to similar properties now exempt. In the language of the bill, provision is made for in-lieu payments on "real properties owned by the Federal Government for certain housing purposes (including housing constructed under the following laws transferred to Federal agencies other than the Housing and Home Finance Agency)." The transferred properties referred to are the resettlement and rehabilitation projects constructed under the National Industrial Recovery Act of 1933,[76] and the Emergency Relief Appropriation Act of 1935 [77] and housing under (*a*) the Second

[74] This is summarized from the address by Charles S. Rhyne entitled "Scope and Possibilities of Service Payments in Lieu of Property Taxes," printed in the Tax Institute's Wartime Problems of State and Local Finance. Philadelphia, Tax Institute, 1943, pp. 142-144.

[75] It should again be called to mind that the Budget Bureau bill was drafted in 1951 prior to enactment of the Defense Housing and Community Facilities and Services Act of 1951.

[76] 40 U. S. C. 408.

[77] Act of April 8, 1935, 49 Stat. 115.

Supplemental National Defense Appropriation Act of 1941,[78] (*b*) the Lanham National Defense Housing Act of 1940,[79] as amended, providing public war housing and veterans' emergency housing, (*c*) three deficiency and supplemental appropriation acts of 1941 [80] providing emergency housing for defense and war workers, and (*d*) 1940 and 1942 amendments to the United States Housing Act of 1937 [81] providing for the use of projects for defense and war workers, during the period that such housing is found by the President to be needed to house persons engaged in national defense activities.

539. As previously noted, the bill reenacts as a single section the separate provisions of law previously providing for payments in lieu of taxes. Several of the previous provisions are specifically proposed for repeal.[82]

540. The subsection requiring payments follows in full text (sec. 102 (b)):

> Annual payments shall be made to any applicant State or local government on account of real property included in this section. Such payments shall approximate the taxes that would be paid to the applicant government upon such property if it were not exempt from taxation, subject to deductions to allow for the provision by the Federal Government of any services ordinarily provided by the State or local government. The amount of any such deduction shall be based upon the unit cost to the State or local government for rendering like services.

541. This is essentially a continuation of the present provisions. However, the Budget Bureau bill does propose that the payments shall be made only upon application by the State or local government, whereas the present payments are made without application. The criterion for determining the deduction for services is new.

542. The Lane bill is completely silent on the subject of Federal housing properties, so presumably by general definition, all such properties would be subject to in-lieu payments in the manner directed by that bill (see pars. 936–941).

INDIAN PROPERTY

546. The Bureau of Indian Affairs has about 57.3 million acres of land under its jurisdiction, of which 17 million acres are allotted land owned by Indians under United States guardianship; 39 million acres are owned collectively by tribes, and 1.3 million acres are federally owned land reserved for the benefit or use of Indians. Generally, the Bureau of Indian Affairs makes no payments in lieu of taxes. Treaties with the Indians guarantee tax exemption. However, Indians do pay taxes on about one-half million acres of purchased land. For the most part, States and local units do not furnish services to Indian lands or their inhabitants. However, to an increasing degree, States and counties are participating in the service programs of the Bureau of Indian Affairs, with financing by the United States. For example, payments are made by the United States for Indian children attending public schools.

547. The Bureau of the Budget bill provides for payments in lieu of taxes on real property held in trust for individuals or groups of

[78] Act of September 9, 1940, 54 Stat. 872.
[79] 42 U. S. C. 1521 et seq.
[80] Acts of March 1, 1941, May 24, 1941, and December 17, 1941, 55 Stat. 14, 198, 810.
[81] 42 U. S. C. 1521–1524.
[82] 40 U. S. C. 432–433, 42 U. S. C. 1546.

individuals by the United States which, by reason of such trusteeship, is not subject to taxation by the States and local governments (sec. 3 (d), 101). However, the bill could have little practical application to the great bulk of Indian reservation lands because the cutoff date which the bill provides (or any other cutoff date likely to be substituted) will almost completely eliminate these lands from the payments-in-lieu provision.

548. The Federal Security Agency in commenting on this said:

> We do not believe the bill will be adequate to deal with the problem of Indians and Indian lands. This Agency has consistently maintained that State and local governments should assume some measure of responsibility for the health and welfare of the Indian population. To the extent that any nontaxable Indian lands are excluded from the bill, recognition of the State and local responsibility is retarded. H. R. 5223 is open to this objection because the definition of Federal property, while including lands owned by the United States or held in trust by the United States for the benefit of Indians or Indian tribes, does not include lands owned by the Indians or Indian tribes which are subject to restrictions on alienation imposed by the United States and not subject to State and local taxation. In addition, we believe that even as to federally owned or held Indian lands, the payments provided under the bill will be inadequate. Title I of the bill would generally be inapplicable because practically all of such lands were "acquired" prior to January 1, 1946 (the cutoff date provided in that title), and it is our understanding that the other basis of applicability of title I—subjection of the lands to State or local taxation after that date or payments in lieu of taxes or payments of shares in revenue after that date—is also not present in the case of these lands.[83]

549. The Agency then went on to set forth a case for a different approach.

> * * * Your committee may * * * wish to give consideration to providing payments in lieu of taxes on all Indian lands not subject to State and local taxation through adoption of an approach which * * * takes into account the various aspects of the existing and desired relationships between the States and localities and their Indian populations. Since a cutoff date such as that contained in H. R. 5223 assumes that the States and localities have previously adjusted to the tax losses involved, any such payment in lieu of tax provisions for Indian lands should omit any cutoff date. The Federal Government's practice of bearing a considerable part of the cost of services for Indians which State and local governments normally provide for the rest of their population has helped to retard this sort of adjustment to tax losses in the case of the Indian lands. Such provisions with respect to Indians and Indian lands would also help to achieve our objective of getting the States and localities to assume some responsibility for the provision of health and welfare services for Indians. However, here, as in the case of education, there may well be areas where special needs for services exist and where special Federal assistance will have to be provided.[84]

550. The Department of Justice raised a different sort of question in pointing out that the requirement of payments by the United States on account of Indian lands would involve payments upon property from which the United States would receive no return and where, because of treaties and agreements, the amounts of the payments could not be recovered from the Indians.[85]

551. The problem with respect to these lands has been described in the following words:

> * * * If the Indian reservations were largely self-contained and operated by and for the Indians, there would be no special problem; but such is not the case. Here there is a substantial impact upon State and local governments, and particularly upon educational systems. There is an increasing tendency in the 11 Western States for the Indian children to attend the public schools. In fact,

[83] Letter of the Federal Security Agency to the House Committee on Interior and Insular Affairs, December 27, 1951.
[84] The same.
[85] Letter of the Department of Justice to the House Committee on Interior and Insular Affairs, March 4, 1952.

special Indian schools have been abolished in some States. In addition, lands are still being acquired for the Indians, thus reducing the local tax base. Although a few States are not greatly disturbed over this situation, others are very much disturbed and have even sought special action by Congress.

Another complicating factor in the picture is the situation of non-Indians operating substantial acreage of Indian lands. Out of the total of 56½ million acres in 1944, 13½ million acres were non-Indian operated. Thus many non-Indians live on tax-exempt Indian lands, and, of course, require governmental services.

Against these may be set the following credits: small amounts of unrestricted individual Indian lands are fully taxable, roads are built and maintained on Indian reservations which benefit the public, and tuition payments are made in all of the Western States. In 1947–48, a total of $828,189 in tuitions was paid either in lump sums to 7 States under State contracts or directly to the school districts in the other 4 Western States. A special revenue-sharing act exists for certain Indian lands in Utah, but no payments have yet been made under this act.[86]

552. The Hoover Commission recommended that Indians be integrated into the rest of the population, and termination of tax exemption for all Indian lands. Recognizing the complexities of this problem, one study suggested that at least the following steps could be taken immediately:

1. Inaugurate taxation or inlieu payments on leases of lands to non-Indians and acquired lands as suggested in a later section
2. Provide more adequate tuition payments for Indian children attending public schools.[87]

INDUSTRIAL PROPERTY

(See pars. 441–452)

INLAND WATERWAYS CORPORATION

556. The Inland Waterways Corporation was established under the Director General of Railroads in World War I, and subsequently was created by act of Congress, June 30, 1924, as a Government corporation to develop the inland waterways system of the United States. The Corporation operated the Federal Barge Lines along the Mississippi, Illinois, Missouri, and Warrior Rivers, and a railroad switching facility in Alabama. This latter switching facility was formerly a 100-percent-owned subsidiary which was merged with the parent corporation under the Government Corporation Control Act. All the properties of the Inland Waterways Corporation were sold on July 24, 1953, for $9 million.

557. The property of the Inland Waterways Corporation was never subject to State and local property taxes. However, prior to its merger, the Warrior River Terminal Co., which was organized under the laws of Alabama, paid all taxes to that State, other than State income taxes.[88]

558. Since the Bureau of the Budget bill (sec. 3 (a)) applies to all Government-owned corporations, including the Inland Waterways Corporation, payments would be made on the commercial and industrial property (see pars. 441–453) of the Corporation acquired since the cutoff date (see pars. 831–837).

[86] National Education Association: Status and Fiscal Significance of Federal Lands in the Eleven Western States, 1950, p. 159.
[87] National Education Association: Status and Fiscal Significance of Federal Lands in the Eleven Western States, pp. 159–160.
[88] Annual Report of the Inland Waterways Corporation, 1945, p. 10. See also the Alabama Supreme Court decision in *Warrior River Terminal Co.* v. *State* (48 So. 2d. 100).

IRRIGATION PROJECTS

(See pars. 681–688)

LEASED PROPERTY

(See pars. 716–721)

LIGHTHOUSES

(See pars. 701–703)

MILITARY PROPERTY

561. Military property consists of two general types of property. The first is normally thought of as truly military, and this includes forts, camps, training areas, arsenals, certain navy yard properties, certain storage depots, etc. These properties are very often self-contained units using few of the local facilities and services. The second type of property is that which is more comparable to ordinary commercial and industrial properties consisting of war plants and factories of the Army, Navy, and Maritime Commission, warehouses, wharves, and docks, etc. Many of these properties receive full local services such as police and fire protection. The first type of property is discussed here, while the second type is discussed under a separate heading of "Commercial and industrial property" (see pars. 441–453). Reference should also be made to other pertinent headings.

562. Traditionally, nonindustrial military property has been considered as a type of property which should be exempt from taxation. The thought of course has been that such property is acquired for the defense of all, and it seems something of an anomaly for any area of government to tax the United States for the privilege of providing national defense. However, it is likewise reasoned that since military installations burden only a few selected areas, these alone should not be made to bear a greatly excessive portion of the tax cost of providing defense for all.

563. On the basis of this reasoning, both the Lane bill and the Bureau of the Budget bill provide for inlieu payments. Payments under the Bureau of the Budget bill would apply only to properties acquired since the cutoff date (see pars. 845–846). The 1943 Treasury study suggested the possibility of inlieu payments on land acquired since the beginning of the then existing emergency.[89] A study of a few years ago also declared that at least part of tax cost of real estate of such nonindustrial properties as camps, training areas, airfields, proving grounds, forts, schools, essentially self-contained federally owned housing projects on military reservations, and perhaps the traditional, permanent docks and piers, supply depots, warehouses and storage yards, should be borne by Federal taxpayers.[90]

564. The above referred to study, however, does not recommend full tax payments. Rather what it does propose is to give consideration to tax losses on acquired property (excluding improvement thereafter made) plus supplemental payments when additional costs

[89] Federal, State, and Local Government Fiscal Relations, pp. 286–287.
[90] National Education Association: Status and Fiscal Significance of Federal Lands in the Eleven Western States, 1950, p. 166.

are imposed on States and local governments, minus the value of local-type service provided by the Federal Government.

565. This same study which also provides for full taxation of industrial military property (see par. 441–453), as distinguished from in-lieu payments with consideration for benefits received, concedes the difficulty of finding a reasonable basis for differentiating between strictly military property and business or near business type facilities such as arsenals, ordnance plants, shipyards, supply depots, yards and repair shops. The uncertain conclusion reached is that those facilities used in manufacturing and major repair should probably be classified for full taxation, and the others be classified for in-lieu payments. The suggestion is then made that an important factor in the classification problem is whether or not the Federal Government has the alternative of securing satisfactory services from private enterprise.[91]

566. A national organization writing on this subject said:

> The legislation should remove tax immunity from a significant segment of Federal property not now paying anything to local government. Payments should be made for all military, defense, and experimental installations.[92]

The Military Establishment has quite consistently opposed the payment of any taxes or in-lieu payments on almost every type of property held by it. It has generally argued that the areas in which its major properties are located have deliberately sought the location of such properties there because they would benefit therefrom, and (according to the conclusions of the Military Establishment) they have so benefited. The following paragraph which follows rather closely the language of a letter written by the Department of the Army in 1949 sets out their thinking.

567. The major portion of the lands under the jurisdiction of the National Military Establishment was acquired for military or naval purposes during World War II. In 1942, the Department of the Army investigated 43 military land acquisition projects, involving 326 local taxing units in 27 States. This investigation revealed that only about one-eighth of the taxing units suffered loss of tax revenues without offsetting benefits. Another study then being made by the Department of approximately 100 projects involving land acquisition was believed (on the basis of tentative conclusions arrived at in the course of this study) to substantiate earlier findings to the effect that taxing units suffered initial losses of tax revenues which were more than offset by numerous direct, indirect and intangible benefits accruing thereto by virtue of Federal ownership. Although detailed study disclosed that the removal of lands from the existing tax structure of local communities resulted in hardship in some cases, it was the view of this Department that, insofar as lands under its jurisdiction are concerned, these hardship cases are so limited in number as not to justify the expense of establishment of a Commission as provided for in H. R. 1356 (predecessor to the present Lane bill). The letter then went on to argue that this bill, if enacted, would apply to military installations long maintained for defense purposes. The communities wherein such projects are located, it alleged, have been in existence for years without real property tax support from these

[91] National Education Association: Status and Fiscal Significance of Federal Lands in the Eleven Western States, 1950, p. 167.
[92] National Association of County Officials: Why . . . 1953, p. 10.

establishments, and during this time there has been no noteworthy expression of dissatisfaction regarding the tax-exempt status of these defense properties. Hence it seemed reasonable to conclude that with respect to these earlier establishments, the benefits which have been accruing to the communities have greatly offset any losses of tax revenue occasioned by Federal ownership.[93]

MINERAL LANDS

571. The Mineral Lands Leasing Act of 1920 marked the second departure of importance from the early policy of gradually disposing of the public lands as application should be made for them or as they were settled upon. The first departure had been the Forest Reserve Act of 1891.

572. The basic law for sharing a percentage of the receipts from mineral lands held by the United States is the Mineral Lands Leasing Act of 1920, as amended and supplemented.[94] Minerals currently included within its provisions are coal, phosphate, sodium, potassium, oil, oil shale, gas, sulfur, gold, silver, and quicksilver. Under the law, 37½ percent of the amounts derived from bonuses, royalties, and rentals from the lease of lands containing these minerals shall be paid to the States, or Alaska, within the boundaries of which the leased land or deposits are located. The proceeds shall be used for public roads, public schools, or public educational institutions.

573. It is interesting to note first that such an odd figure as 37½ percent was established as the basis of distribution to the States, and second that it has continued unchanged for so many years. The fact is that 37½ percent was a compromise figure half way between the 45 percent voted by the Senate and the 30 percent voted by the House of Representatives.

574. It is further interesting to observe how the 30- and 45-percent figures were arrived at. Representative Snell of New York explained the 30-percent figure in this way:

> * * * in the forest-reserve States the present law is that the States shall receive 25 percent of the receipts and that 10 percent shall go for roads. That would give the States about 35 percent. I have taken up this matter with the Interior Department, and they say that they feel that about the correct amount that the States should receive is in the vicinity of 30 percent * * *[95]

575. In arguing for the 45-percent figure, Representative Mondell of Wyoming in a prepared memorandum also tied his figure to that made with respect to forest reserves, but argued in this way:

> There was some difference of opinion at the beginning as to the portion of the national-forest revenues that the States and their communities were entitled to in lieu of the taxes they would otherwise have collected, but eventually an agreement was reached whereby at the present time the States and their communities in which the forest reserves are located secure the benefit of 45 percent of all of the receipts from the reserves * * * 25 percent of the receipts are paid directly to the States for the benefit of the counties in which the reserves are situated; 10 percent are used by the forest administration for the building of roads necessary for the use of the reserves by the community; and an additional 10 percent is dedicated to the reimbursement of the fund provided by section 8 of the good-roads bill, which fund is utilized for the building of roads on or in the vicinity of the reserves in cooperation with the States and their communities * * *
>
> It is highly important to keep these facts in mind, because * * * the forest reserves, or national forests, are the only areas which have been permanently

[93] Letter from the Department of the Army to House Committee on Public Lands, June 6, 1949.
[94] 30 U. S. C. 191, 275, 285, 286, 292.
[95] Congressional Record, vol. 58, Oct. 28, 1919, p. 7653.

reserved in Federal ownership. It is interesting to note that by a series of enactments, all taken after careful consideration, the sum of 45 percent of the total receipts of the reserves was determined upon as the sum which the States and their communities were entitled to by reason of their loss of the power to tax the lands which were thus permanently held in public ownership.[96]

576. Two special acts provide an allotment of the same percentage figure for royalties received from certain oil and gas lands, south half of the Red River in Oklahoma [97] and the oil and gas lands which were added to the Navaho Indian Reservation in Utah.[98] The act pertaining to the Oklahoma lands provides that these payments shall be in lieu of State and local taxes on Kiowa, Comanche, and Apache tribal funds, and requires that the payments be used by the State for the construction and maintenance of public roads, and support of public schools. The act pertaining to Utah requires that the sums received be used for paying tuition of Indian children in white schools, or building or maintaining roads across the lands, or for the benefit of the Indians residing on the reservation.

577. Payments under the Mineral Lands Leasing Act are currently about $20 million per year, while the Oklahoma oil and gas lands are yielding around $10,000.

578. The question has been raised whether the States should not share in the revenues from submerged lands beyond the historic boundaries of the States in the same way that the public-lands States share in the revenues from public lands.[99]

579. The receipts from mineral leases constitutes an important source of revenue in several States. One study points this out and discusses the equity of existing arrangements and possible additions and alternatives. A quotation follows:

> * * * In terms of tax loss it is not likely that a case can be made for enlarged payments. On this ground alone, the present payments appear to be ample. Furthermore, the States have an opportunity, as several do, to tax mineral production on both Federal and private lands by means of an occupation or severance tax, or by using production as a basis of assessment for property taxes. Still another possibility is that of taxing the value of a leasehold. This application of the property tax is now being tested with respect to mineral leases on Indian lands in Utah.
>
> A case might be made for a larger share of Federal mineral royalties on the grounds that if these lands were State-owned, as some people think they should be, all the royalties and not just three-eighths of them would accrue to the States. This argument is strengthened by the fact that the Federal Government retains only 10 percent of these mineral receipts, allocating the other 52½ percent to the States via the reclamation fund. The argument then rests on the question of whether the distribution between public roads or schools on the one hand and reclamation on the other hand is logical and defensible.
>
> In opposition to the above argument, a case can also be made for the position that as a step toward greater equalization of tax resources and tax needs, the tax benefits of important mineral deposits should not accrue entirely to the States or localities in which they are located. This view would require the retention of a considerable portion of the mineral royalties by the Federal Government to be used in an equalization program within a region or among all States.[100]

580. With respect to Federal subsurface mineral rights, the Bureau of the Budget has argued that these rights do not ordinarily result in the imposition of any substantial burdens upon State and local Government. Furthermore, any valuations placed upon these rights for

[96] Congressional Record, vol. 58, Oct. 30, 1919, p. 7772.
[97] 42 Stat. 1448, 44 Stat. 740, 48 Stat. 1227.
[98] 47 Stat. 1418.
[99] See remarks of Senator Ellender of Lonisiana, Daily Congressional Record, June 25, 1953, pp. 7451–7457.
[100] National Education Association: Status and Fiscal Significance of Federal Lands in the Eleven Western States, 1950, pp. 157–158.

purposes of taxation or payments in lieu of taxes would necessarily be highly speculative.[101] They are specifically excluded under the Budget Bureau bill (sec. 3 (d) (f)), if title to the surface rights is not also held by the Federal Government.

MINTS

(See par. 421)

NATIONAL FORESTS

586. The Forest Reserve Act of 1891 [102] represents the beginning of our National Forest system. This act was the first departure from the policy of disposing of public lands as application was made for them, or as they were settled. The Weeks Act of 1911 authorized the acquisition of lands for national forests. Annually Congress makes sums available for the protection of the watersheds of navigable streams and to increase the production of timber. There are 78 National Forest purchase units in 33 States, principally in the eastern half of the United States. The present value of forest lands thus purchased has been conservatively estimated at $200 million, which is more than twice their cost. In addition, Congress has adopted special acts for the acquisition of particular forest areas. There are approximately 181.1 million acres of land in 40 States of the United States, Alaska, and Puerto Rico set aside as national forests.

1. History and types of payments

587. Legislation in 1906 and 1907 provided that 10 percent of the receipts from forest resources were to be paid to the States in which such reserves were located, to be redistributed to the counties containing such reserves for schools and roads. Payments to any county were not to exceed 40 percent of total county income from other sources.

588. The foregoing acts were superseded in 1908 [103] and amended in 1944,[104] and 1950 [105] by increasing the percentage of receipts payment to 25 percent and omitting the proviso limiting payments to 40 percent of income from other sources. The provision requiring that the money be used for county school and road purposes was retained. Other legislation provided that 25 percent of the receipts from national forests acquired under the Weeks Act of 1911 as amended,[106] and receipts in connection with the utilization of mineral resources acquired under the Weeks Act [107] are also to be made available to the States for the benefit of county schools and roads. Payments under this arrangement amount to about $18,700,000 per year, nine-tenths of which come from timber sales.

589. It may also be noted that 37½ percent of the funds derived by the Federal Power Commission from licenses issued by it for the occupancy and use of national forests and public lands in connection with power dams, are paid to the States.[108] Payments, which have

[101] U. S. Bureau of the Budget: Executive Memorandum No. 722, Regarding Payments in Lieu of Taxes, August 16, 1951, p. 7.
[102] 26 Stat. 1095, 1103.
[103] 16 U. S. C. 500.
[104] 58 Stat. 737.
[105] 64 Stat. 87.
[106] 16 U. S. C. 500.
[107] 39 Stat. 462, 1150.
[108] 16 U. S. C. 810.

averaged around $35,000 per year, are expected to rise to $93,000 in fiscal year 1954.

590. In addition to the funds allocated for distribution for county use, it is further provided by the law that 10 percent of the receipts from national forests shall be available for expenditures on forest roads and trails in the States of origin.[109] In effect then, the States receive a total of 35 percent of the receipts from national forests. Sums currently being spent under this provision amount to approximately $7,500,000 per year.

591. In addition to the foregoing general provisions, special provisions have been adopted for certain national forests in Arizona and New Mexico, and in Minnesota.

592. The special provisions applicable to Arizona and New Mexico are found in the enabling act under which they attained statehood.[110] The act granted certain lands to these States and provided that there should be paid to each such proportion of the gross proceeds from all national forests in each State, as the area of lands granted by the act situated in forest preserves bears to the total area of all national forests in each such State. Such sums are paid into the common school fund of Arizona and New Mexico. Payments under this arrangement are now about $123,000 per year.

593. The second special provision applies to the Superior National Forest lands in Cook, Lake, and St Louis Counties, Minn. Adopted in 1948, this legislation provides that there shall be paid to Minnesota, for distribution to the counties concerned, three-fourths of 1 percent of the fair appraised value of such forest lands located therein.[111] The appraised value of the lands is determined by the Secretary of Agriculture at 10-year intervals; his determination is conclusive and final. Payments under this arrangement amount to about $45,000 per year.

2. Justification for and objections to payments

594. The justification for demands for payments on account of forest lands is found at least in part in the fact that particular States, counties, or cities should not be expected to assume a burden or tax loss which belongs to the National Government. If national forests are projects of general worth and significance, in-lieu payments of taxes should be made which would force all sections of the county to bear a just portion of the burden. There are instances, for example, of the creation of a necessary and desirable national forest which has had the effect of cutting a rural county to one-third of its original area, tax revenue being cut along with other elements. The remaining part of the county was left with most of its citizens but with insufficient funds for decent schools, roads, health services, or courts.[112]

595. Numerous objections have been raised to the provision under which 25 percent of the revenues are paid to counties. These are similar to those raised against sharing arrangements in general. Among the principal objections are the following:

1. In some instances the payments are inadequate. The Department of Agriculture has conceded that there are some local inequities in the existing

[109] 16 U. S. C. 501.
[110] 36 Stat. 561, 573.
[111] 16 U. S. C. 577g.
[112] National Association of Tax Administrators: Report of the Committee on Payments in Lieu of Taxes, in Revenue Administration, 1943, p. 31.

system.[113] It may be noted, for example, that a county may get no revenues at all from acquired forest lands pending their restoration to a productive status.

2. The payments fluctuate so much from year to year that the counties are unable to depend on the payments as an element in longrange financial planning. This sometimes results in the largest contributions from the national forest occurring during periods of high economic activity, while the smallest may come when sources of income from other sources are lowest.

3. The requirement that the receipts be apportioned among the counties on the basis of their proportionate acreage in national forest lands is not always equitable, because a large area in one county may be of low productivity, and return only a minor part of the national forest income, whereas the smaller area in another county may be high in revenue productivity and return a large part of the national forest income.

4. The restriction of the proceeds for use on county schools and roads prevents the most effective use of the funds. At the present time, in many States, roads and schools are financed largely by the States themselves or by special taxes or allotments. Hence, the limitation in the Federal act handicaps the counties in making the most beneficial use of the payments.

3. Proposals for changes in the law

596. A national organization of local officials concedes that national forests should be exempt from taxation or in-lieu payments (other than sharing).[114] It does advocate, however, that when the removal of lands from local tax rolls for forest purposes results in serious local financial loss, 10-year declining transition payments should be made, with the proviso that after the 10 years permanent in-lieu payments would be made on a 50-percent basis.

597. Succeeding paragraphs will take up the matter of substituting property taxes for sharing arrangements, but first it is desirable to notice a recommendation of the Real Estate Board in 1943. The Board was concerned with the difficulties local units encountered when forests (especially acquired lands) were producing a low-revenue yield. The Board stated its views as follows:

> * * * It believes * * * that with respect to acquired conservation lands it would be equitable to enlarge total contributions as a temporary measure pending the restoration of these lands to full income-yielding status. It is proposed that this be done by guaranteeing a minimum payment equal to a specified percentage of the purchase price.[115]

598. A proposal, which has had the approval of the Department of Agriculture, would pay to each county a fixed percent of the fair value of the national forest land. Thus a bill in the 80th Congress (S. 582) providing for paying 1 percent of such value as determined by the Secretary of Agriculture, subject to appeal by the States to the United States district courts, passed the Senate[116] but never got out of committee in the House. The Department of Agriculture had urged that a three-fourths of 1 percent payment (rather than 1 percent as it was in the bill as it passed the Senate and 2 percent as it was introduced) was fairer because it was shown that the average tax burden on farm real estate was 0.86 percent and the costs to counties created by farm real estate were substantially greater than national forest lands. Further the Federal Government finances some of the costs on national forest lands such as fire protection and road and trail construction and maintenance which would be borne in part at least by the county if

[113] Letter from the Department of Agriculture to the House Committee on Interior and Insular Affairs, May 1, 1953.
[114] National Association of County Officials: Why . . . 1953, p. 9.
[115] Federal Contributions to State and Local Governmental Units With Respect to Federally Owned Real Estate, p. 27.
[116] Congressional Record, vol. 94, June 1, 1948, p. 6761.

these lands were in private ownership. The lower percentage, it was estimated, would yield the counties $2 million more annually than they were getting under the 25-percent arrangement.[117] It should be noted, however, that a figure much in excess of the then $5 per acre average used in making the calculation would be needed currently to raise the net yield to $2 million more annually than under the present 25-percent arrangement because the yield under the latter arrangement has tripled since that time.

599. It is interesting to note that although the foregoing proposal failed to be reported in the House, a similar measure (see par. 593) applicable only to the Superior National Forest in Minnesota was adopted. It provided for a payment of three-fourths of 1 percent on a value fixed (without appeal) by the Secretary of Agriculture. However, there were special reasons particularly favorable to this method in this case. The first reason is that as a matter of policy much of the area is closed to commercial logging. The idea is to preserve the unique, highly scenic, and primitive beauty of the forests and the whole area which is set aside as wilderness-canoe area. Thus, since the revenue yield of the area will be negligible this method was felt to be necessary to compensate the counties for the lack of timber-sale receipts from the no-cut national forest area, and for the lack of taxable improvements due to the elimination of much, if not all, of the privately owned land within the special acquisition portion of the national forest area.

600. Objections to a change from the percentage-of-receipts to a percentage-of-value basis would be raised by nearly every county which would receive a lower payment under the new formula. It is clear that lower payments would result to some counties in spite of the fact that counties as a whole would benefit more. The counties which would suffer would be those in which national forests, as of the time of adoption of the change, were productive of high revenues through intensive utilization of bodies of mature timber. On the other hand, counties containing the more valuable parts of the national forests, or national forest resources now latent but of large volume and future value, would receive contributions considerably in excess of these now payable.

601. Another objection to basing the distributions on the value of the forest lands lies in the enormous problem of land classification and valuation. Within the national forests, there are large areas above timberline or otherwise barren or unproductive or so completely inaccessible that the nonexistence of current monetary or assessable value is so obvious and irrefutable as to obviate the need for specific appraisal. But even so the acreage requiring specific determination of fair value would be approximately 150 million acres, or about five-sixths of the total.[118] This, it was estimated, would cost about $1,500,000 spread over a 3-year period.

602. The National Association of Tax Administrators in 1946 expressed a preference for direct assessment of national forest property rather than sharing or in-lieu payments.[119] In the discussion which followed the foregoing recommendation, L. F. Kneipp of the United States Forest Service said:

[117] S. Rept. No. 1267, 80th Cong., 2d sess., p. 4.
[118] S. Rept. No. 1267, 80th Cong., 2d sess.
[119] National Association of Tax Administrators: Revenue Administration, 1946, p. 43.

* * * Recommendation No. 3 proposes, in effect, that the real property of the United States, including the United States forests, shall be subject to the same taxation as other private property. I would like to point out that in the United States there is a great deal of property of such character that its operation permanently by private enterprise is hardly feasible. In the western part of the United States there are 154 million acres of land where the annual precipitation is less than 10 inches, and 149 million acres where the precipitation is from 10 to 12 inches annually. I think it has been demonstrated that agricultural operation is not feasible with a rainfall of less than 15 inches. Our Bureau of Reclamation has reclaimed some 20 million acres of such land.

There are 196 million acres above an elevation of 6,000 feet, and while there is some field for private enterprise in those territories, it is not very large. There are 73½ million acres that have been so depleted of forest capital that they can be restored only by a long, extensive plan. There are something like 88 million acres that today support only two-fifths, or less than one-half of the trees they are capable of supporting. To restore this land to productivity will require great outlays, over a long period of time, of noncompensatory investment.

These problems involve not alone the welfare of the individual States but of the Nation. And, in most of the cases I have discussed, there has been little willingness or little ability on the part of the States, or on the part of anyone except the Federal Government, to undertake any extensive restorative process.

I can understand that your responsibility is to maintain the financial integrity of the various States of the Union, but actually can you maintain that integrity unless the integrity of the lands you are discussing is maintained; and if the Federal Government is the only means, or the only agency that undertakes the restoration of these lands, should the Federal Government be handicapped by being exposed in its entirely nonprofit activities to the same rates of taxation as are applied to privately owned properties operated for purposes of private profit?

Now, I do not qualify as a college professor or a "bureaucrat." I started as a ranger in Arizona in 1900, 46 years ago, and I have been too busy since then to go to college. You understand, therefore, that I am not speaking from the purely academic point of view. But I have seen area after area, and community after community, which has allowed its resources to be exploited and wasted, and once the soil has been laid bare, a large outlay is necessary to make it productive again. Mr. McKenna spoke about stepchildren getting the soup that was left. I want to call to your attention that these Federal enterprises are not financed by the local communities or local governments wherever they happen to be, but are financed by the entire country. That action is justified because the conservation and restoration and reclamation of these areas is vital to the entire country; in many localities where the local activities are increased greatly and where the local wealth is increased greatly as a result of these governmental activities, the stepchildren are getting more soup in the ladle than if Uncle Sam were not filling the kettle.

I would like to clarify one impression that seems to be widely prevalent, and that is that these lands contribute nothing at the present time. Let us take Mr. McKenna's State of Oregon and see what it has received. It has received about $5¾ million from the national forests; there have been about $25 million worth of roads built just because of the existence of the national forests. The State has participated in the Federal road fund to a much greater degree because of the existence there of the public lands. Those returns may seem small in proportion to the area until you consider the areas that have been benefited. The roads to Mt. Hood and in various other parts of the State never would have been built but for the expenditure of Federal funds resulting from the ownership and necessity for care and preservation of these lands by the Federal Government. In short, these lands have not been maintained free all these years, nor will they continue to be.

What I want to emphasize is that these lands can be restored to productivity or maintained only by very large outlays, which must come either from the whole Nation, through the Federal Government, or through the regions in which they are situated. If that process of restoration and perpetuation is unduly burdened, it will fail; and if it fails, the losses resulting from the present nontaxable status will not be nearly so large as the losses to private industry and the diminution of assessable property in these regions in the future. I think you should bear these things in mind when you arrive at your conclusions on these subjects.[120]

[120] National Association of Tax Administrators: Revenue Administration, 1946, pp. 43–44.

603. The Department of Agriculture has more recently taken exception to another bill (the Lane bill) which would involve an evaluation of all forest lands. This bill, H. R. 508 of the 83d Congress, would create a Commission on Federal Reimbursements to States and Local Governments and require payments in lieu of taxes by reason of Federal ownership of real property, with certain exceptions. The Commission would be guided by the actual tax loss sustained by the State or local government as a result of Federal acquisition or ownership, and any direct monetary benefits derived by the State or local government as a result of such ownership.

604. In commenting on this proposal, the Department of Agriculture wrote: [121]

The complexities envisaged in applying the contributions plan contained in this bill to national-forest lands alone demonstrate clearly its impracticability. To compute annually the tax-equivalent liability in accordance with the procedures outlined in H. R. 508 would impose duties upon the Commission that it might be ill-equipped to perform. National-forest lands and improvements are located in some 650 counties of the United States. Within these counties are probably as many as 50,000 local governments with authority to levy and collect taxes. When the special-assessment districts included in the compass of this bill are added, the number is even greater. Handling national-forest contributions in accordance with the plan proposed in this bill would necessitate the annual assembly of tax information by each of these numerous districts in which national-forest property happened to be located.

More specifically this would mean determining the distribution of the many million acres of national-forest land and improvements according to the taxing district or combination of districts in which located. Where overlapping districts were not coterminous it would be necessary to know the acreage inside and outside of certain combinations.

The valuation process following the inventorying process would present even greater complexity. To value a large forest as a whole is a major undertaking, but to break that larger figure down by individual taxing districts is a much greater task. Furthermore some districts would have stands of valuable species, while others might have an acreage comprised largely of rock slides, lava flow, or bare mountain peaks. These wide value variations could not be averaged out as they might be in appraisal of a large tract, but each individual taxing district would have to be considered as an entity. Successful completion of this work would require a sizable staff of appraisers familiar with forest-land values and structural improvements.

Not only would it be necessary to list and value periodically all national-forest property by taxing districts, but it would be necessary to compute the ratio at which real property in the assessment jurisdiction was valued for tax purposes in relation to its full value. Even within a single State no two taxing districts may assess on the same basis of full value. Since there are relatively few governmental units that have adequate information of this character, the Federal Government would be forced to compile detailed assessment ratio data.

Furthermore in connection with computing a Federal contributions liability equal to taxes it would be necessary to know the rates applied to assessable values for each tax district involved. As in the case of valuation, not only must they be known for each district, but, should a parcel of land lie in an area in which 3 or 4 districts are superimposed one upon another, then the combination of rates must be known. Again, should the districts not happen to be coterminous, it would be necessary to determine the parts without and the parts within the various combinations of districts.

The administrative burden involved in computing the amount of monetary payments now made to local governments for purposes of determining offsets to tax liability as provided in the bill might be even more onerous than the procedures thus far described. Twenty-five percent of the gross proceeds from national-forest receipts are now returned by law to State and local governments. In addition 10 percent of the gross receipts are earmarked for expenditure on roads and trails within the national forests. It must also be decided whether Federal

[121] Letter from the Department of Agriculture to the House Committee on Interior and Insular Affairs, May 1, 1953.

grants in terms of road funds, etc., paid to the States and based in part at least on the acreage of Federal land are to be considered as "monetary benefits." It will be necessary to determine if "monetary benefits" include cash savings to the local governmental units due to the Federal Government financing facilities or service, such as for fire protection or road construction which the local governmental units or States would otherwise finance in whole or in part. Offsetting these payments against an amount equal to tax payments such as would be made if the national forest were in private ownership would require that the offsetting amounts be accounted for by district; that is, each county, township, school, special purpose, or special assessment district.

As previously noted, section 5 (c) of the bill states the policy that "The Federal Government, with respect to Federal real property, is not under any equitable duty to contribute to the States or local governmental units any sum in lieu of taxes in excess of the tax revenue said real property would produce if it were privately owned." However, the bill makes no provision for reducing present revenue-sharing payments when they would exceed the revenue that would accrue to the States or local government units from taxation.

In some instances national-forest holdings may constitute the bulk of the land in the county. Advantage of such a situation might be taken through raising the valuation and rates on a small portion of privately owned land in order to obligate the Federal Government to make large contributions payment on account of its holdings in the district. No recourse is provided against this kind of action.[122]

605. The Budget Bureau bill continues to provide tax exemption for national forests (without disturbing sharing arrangements), except in one particular. It does provide for transition payments on a declining basis over a 10-year period after acquisition of lands which had been in taxable ownership. For a full discussion of transition payments, see par. 841–846. The Department of Agriculture stated its disagreement in 1952 with the Budget Bureau proposal. It argued that the present arrangements with respect to all conservation lands administered by it should be completely remodeled, and a more equitable and stable arrangement with respect to national forest and land utilization project lands was needed.[123]

NATIONAL PARKS

611. National parks, national monuments, and other areas of unusual historic, scenic, scientific, or recreational character have been set aside in the interest of their preservation as well as public use. Yellowstone National Park was the first of the parks to be created in 1872. At the present time there are 180 park and other areas comprising about 24 million acres located in 38 States, the District of Columbia, Alaska, Hawaii, Puerto Rico, and the Virgin Islands. A little over half this area is in continental United States. Of the nearly 14 million acres in continental United States 2 million acres are acquired lands. The 11.9 million acres reserved from the public domain consists chiefly of rugged mountains, deserts, and other land of little value except for scenic and recreational purposes. However, some parts of both the public domain lands and acquired lands are suitable for forestry, agriculture, and grazing. The Government's capital investment in all these areas, exclusive of the lands, is approximately $420 million. Park property is exempt from taxation and there is no sharing of park revenues except in the very limited way set forth below, and also through sharing of receipts from grazing, etc.,

[122] Letter from the Department of Agriculture to the House Committee on Interior and Insular Affairs, May 1, 1953.

[123] Letter from the Department of Agriculture to the House Committee on Interior and Insular Affairs, March 5, 1952.

which are discussed elsewhere. Park lands are the only important category of the public domain for which no general sharing of revenue or other payments are made to the States.

612. An exception to the general rule against tax payments or payments in lieu is found in the case of the Grand Teton National Park. By legislation adopted by Congress in 1950,[124] the then-existing Grand Teton National Park and the Jackson Hole National Monument were consolidated to form a new Grand Teton National Park. The Jackson Hole National Monument had been created in 1943 by Executive order of the President after a long-unsettled dispute over Federal acceptance of a gift from John D. Rockefeller of certain privately owned lands. The objections to Federal acceptance of the lands came from the fact that already 95.5 percent of the area of the county affected, Teton County, Wyo., was already held by the Forest Service, the National Park Service, the Bureau of Land Management, the Fish and Wildlife Service, and the Bureau of Reclamation. By reason of Federal ownership of so much of the lands in the county, it was alleged that the county was obliged to levy taxes at almost double the average rate for all counties in Wyoming. Hence, the county strongly objected to a further reduction of its tax rolls.

613. As a basis for consent to such Federal acquisition it was first proposed that the Federal Government should consent to a perpetual annual payment to Teton County of a sum equal to the full amount of assessed taxes on the lands acquired subsequent to March 15, 1943, the date of establishment of the Jackson Hole National Monument. As finally agreed upon by Congress, it was decided to pay full taxes for a period of 10 years, and thereafter to pay annually a percentage thereof which would decline 5 percentage points each year so that within the next 20 years (i. e., 30 years in all) all payments would cease.[125] It is further provided that payments in any 1 year shall not exceed 25 percent of the fees collected from visitors to the Grand Teton National Park and nearby Yellowstone National Park. It was the thought of the Department of the Interior which objected to perpetual payments, that the gradually reducing scale of payments would allow sufficient time for the county to adjust itself to the loss of taxes.[126] Obligations currently incurred amount to approximately $26,000 a year.

614. There might also be considered an exception to the general rule the payments being made on account of education being furnished to dependents of persons engaged in the operation of Yellowstone Park and living on tax-exempt property for which payments in lieu of taxes are not paid. Yellowstone Park was created before Wyoming and Montana were admitted to the Union, and the States had taken the position that they had no obligation to supply free schooling for children of park employees living in the park. As a result of legislation adopted in 1948, payments now may be made out of revenues derived from visitors to the park (*a*) to school districts as reimbursement for educational facilities furnished to such pupils, or (*b*) agreements may be entered into with the States or local agencies for the operation of school facilities, the construction and expansion of local facilities at Federal expense, and United States contributions to cover

[124] 16 U. S. C. 406d-3.
[125] 16 U. S. C. 406d-3.
[126] Letter of the Department of the Interior to the Senate Committee on Interior and Insular Affairs: June 9, 1950 (S. Rept. No. 1938, 81st Cong., 2d sess.).

the increased cost to local agencies for providing educational services.[127] Obligations in 1953 to 1955 will range from $19,004 to an estimated $24,843.

615. An organization of local officials concedes that national parks and monuments should continue exempt from taxation and in-lieu payments.[128] However, when the removal of such property from tax rolls causes serious local financial losses, 10-year declining transition payments should be made, leaving at the end of the 10 years permanent continuous payments on a 50-percent basis.

616. Also, with the purpose of compensating the States for loss of tax base on account of lands acquired by the National Park Service through purchase or donation, the Federal Real Estate Board recommended in 1943, that a contribution be authorized amounting to not more than 25 percent of the receipts from visitors' fees allocable to these lands.[129]

617. The Bureau of the Budget bill (sec. 103 (c), 104) continues complete exemption of national parks, except so far as provision is made for transition payments on property in general. (See pars. 845–846.) No provision is made in the bill for continuing the transition payments provided in the statute applicable to Grand Teton National Park. (See pars. 612–613.) The Department of Justice has commented on this and in doing so pointed out that the transition payment provision of the Budget Bureau bill differs from that provided in the Grand Teton National Park formula which was worked out with particular care for the affected communities, and the Department concluded that the earlier formula should probably not be disturbed.[130] The Lane bill, which provides for in-lieu payments on almost all Federal property, includes national parks within its terms.

OFFICE BUILDINGS

621. The Federal Government holds numerous types of buildings used for offices which may serve local, regional, or national purposes. Post offices and courthouses are good examples of buildings most often serving local purposes, and there is almost universal agreement that properties of these types should be exempt, except perhaps for transition payments on acquired property. There is some doubt, however, when the properties serve regional and national purposes. Properties in Denver and San Francisco are cited as examples of properties serving a regional interest.

622. The committee on payments in lieu of taxes of the National Association of Tax Administrators reported in 1946 that no need presently existed for removing the tax exemption of federally owned office buildings used for general administrative purposes.[131] However, the committee on municipal revenues from federally owned property of the National Institute of Municipal Law Officers reported their belief that office buildings, other than those performing strictly local services to the community should not be excluded from payment.[132]

[127] 16 U. S. C. 40a–40c.
[128] National Association of County Officials: Why . . . 1953, p. 9.
[129] Federal Contributions to States and Local Government Units With Respect to Federally Owned Real Estate, p. 24.
[130] Letter from the Department of Justice to the House Committee on Interior and Insular Affairs, March 4, 1952.
[131] National Association of Tax Administrators: Revenue Administration, 1946, p. 43.
[132] National Institute of Municipal Law Officers: Municipalities and the Law in Action, 1952, p. 95.

One organization has warned that care should be taken so that Federal office buildings serving a regional area would not be held to be benefiting principally the city or county in which it is located.[133] The 1943 Treasury study points out that holdings of office buildings are of long standing, no payments have been made, tax losses are small, heavy concentrations do not occur, and the local services required are not important.[134]

623. The position of the Bureau of the Budget with respect to courthouses is that they should be exempt (sec. 103 (b)) because they are held primarily for service to the local public, and the cost therefor should be borne by State and local taxpayers rather than Federal taxpayers. With respect to office buildings generally, they too are continued as exempt (secs. 103 (d), 104) except when classified as serving national interests or when acquired by the Federal Government in connection with loans or contracts of insurance or when under lease or conditional sales contracts. In these excepted cases transition payments in lieu of taxes may be paid over a 10-year period at declining rates, when prior to such Federal acquisition they had been in taxable ownership. These transition payments are discussed at some length in paragraphs 841–846. The Lane bill specifically exempts Federal office buildings, courthouses, customhouses, etc.

624. One proposed solution described elsewhere (see pars. 851–854), that would have particular aptness of application in the case of office buildings would be the proposal to tax Federal property in an area when the total value of such property exceeds a designated percentage of all taxed property.

OREGON AND CALIFORNIA REVESTED LANDS AND COOS BAY WAGON ROAD RECONVEYED LANDS

626. In 1866 and 1869, certain public lands were granted to the Oregon and California Railroad Co. and the Coos Bay Wagon Road Co. in aid of the construction of these roads. Title to the lands was revested in the United States in 1916 and 1919 because the grantees violated covenants contained in the granting acts. The lands are located in Oregon and are principally valuable for their stands of timber. Administered as they are by the Bureau of Land Management, Department of the Interior, this is one example of an outstanding forest area which is not under the jurisdiction of the Forest Service, Department of Agriculture.

627. The legislation under which the United States retook title to the more than 2½ million acres of land was based on the premise that the United States interest therein would be liquidated. The special favorable tax treatment given these lands is attributed to the fact that they were once in private ownership.

628. The original 1916 Revestment Act [135] applicable to the Oregon and California grant lands provided that 25 percent of the proceeds from the lands should be paid to the State for school purposes and 25 percent to the counties for schools, roads, bridges, and port districts. The 1919 legislation [136] providing for the reconveyance of the Coos Bay Wagon Road grant provided that 25 percent of the proceeds

[133] National Association of County Officials: Why . . . p. 10.
[134] Federal, State, and Local Government Fiscal Relations, p. 284.
[135] 39 Stat. 219.
[136] 40 Stat. 1180–1181.

from the lands should be paid to 10 counties for schools, roads, bridges, and port districts.

629. By the terms of legislation in 1926, after the United States was reimbursed for the cost of repossession, the remaining revenues from the land were to be used to pay the equivalent of county property taxes that would have accrued from 1916—the date of repossession—to 1926, and to make current payments equal to property taxes. This was the first congressional authorization of a payment measured by former taxes.[137] For the purpose of determining current taxes, the counties concerned with the Oregon and California grant lands were required to submit annual claims for the equivalent of the taxes which would have accrued from these lands if they had remained in private ownership, which claims had to be paid from the proceeds of the lands. However, such proceeds were insufficient to meet the claims, and the unpaid portion of the claims continued to be a charge against future proceeds.

630. New legislation in 1937,[138] applicable only to the Oregon and California grant lands, provided for the payment of claims theretofore not met, over a period of years, from the proceeds of the lands, but provided further that no additional tax claims should accrue. Thereafter, payments were limited to a fixed percentage of the proceeds from the lands. Specifically, 50 percent of the receipts of the Oregon and California land-grant fund should be paid to counties (none to the State which formerly shared in the receipts), plus an additional 25 percent after certain charges and payments in lieu of accrued charges had been paid. This act, "obviously through oversight," [139] made no similar provision for the Coos Bay Wagon Road grant lands. To remedy this, another act [140] was passed in 1939 which provided a different system for these particular lands while leaving unchanged the provision applicable to the Oregon and California grant lands. The new act applicable to the Coos Bay Wagon Road grant lands provided that the lands and the timber thereon should be appraised at least decennially by a designated board and assessed like other properties, and payments in lieu of county taxes computed by applying the same rate of taxes as is applied to similar private property. Such payments, however, were limited to 75 percent of the receipts by the United States from such lands.

631. This diverse treatment has been described as follows:

> It is indicative of the lack of a general lieu payment policy that although the Coos Bay lands were changed from a revenue sharing scheme to an ad valorem system, the remaining Oregon and California lands (the revested railroad portion) 2 years earlier were changed from an ad valorem basis to one providing for revenue sharing. This apparently inconsistent approach, of course, is the result of piecemeal legislation which takes expedient action with respect to problems as they arise.[141]

632. The counties receiving funds from the Oregon and California grant lands may use them for the same purpose as other county funds, while the proceeds from the Coos Bay Wagon Road grant lands must be used for common schools, roads, highways, bridges, and port districts. The Oregon and California grant lands and Coos Bay

[137] Cf. Tennessee Valley Authority, Report on Section 13 of the TVA Act, p. 3. (Mimeographed.)
[138] 50 Stat. 875–876.
[139] H. Rept. No. 480, 76th Cong., 1st sess.
[140] 53 Stat. 753.
[141] Clawson, Marion: Uncle Sam's Acres. New York, Dodd, Mead & Co., 1951, p. 345.

Wagon Road grant lands are yielding 18 Oregon counties an average of around $6.8 million per year of which about $30,000 represents Coos Bay Wagon Road grant funds.

633. The arrangement with respect to the Oregon and California grant lands has been described as "an unusually generous arrangement" while that with respect to Coos Bay Wagon Road grant lands is said to leave the counties "well treated." [142]

634. Neither the Bureau of the Budget bill nor the Lane bill disturbs the existing arrangements with respect to these lands. The Lane bill, however, would provide for in-lieu payments on these lands since they do not come within any of the exceptions of the bill.

POST OFFICES

636. Post offices and postal service properties are exempt, and according to the National Association of Tax Administrators' Committee on Payments in Lieu of Taxes, there is general acceptance of the principle that post offices should not be subject to State and local property taxes or payments in lieu of taxes.[143] The 1943 Treasury study points out that holdings of post office property are of long standing, no payments have been made, and though the postal service is productive of revenue in the enterprise sense, tax losses are small, heavy concentrations do not occur, and the local services required are not important.[144]

637. The Bureau of the Budget bill and the Lane bill make no provision for taxing post offices. The position has been taken in some sources however that post offices should be taxed. Defense of such a position has been based in part at least on simplicity of administration, the thought being that once exclusions from the general rule are made administrative difficulties will arise.[145] On the other hand, the argument is that post offices generally provide services almost exclusively for the area in which they are located, and their tax cost should be borne in the main by State and local taxpayers. Further, they are so widely spread over the whole country that payments to the local governments would result in very little redistribution of funds.

POWER PROPERTY

641. Generating capacity installed by Federal power agencies now amounts to 11.9 million kilowatts, or about 13 percent of total United States capacity and, when projects now underway are completed, will total 22.8 million kilowatts. It is expected to reach 17.9 million kilowatts by the end of 1955. The Federal Government has become the principal supplier of electric energy in the Pacific Northwest. Most of the Federal projects are exempt from State and local taxation and make no contributions in lieu of taxes. Two outstanding exceptions are the Boulder Canyon project (see pars. 644–645) and the Tennessee Valley Authority (see pars. 726–735).

[142] National Education Association: Status and Fiscal Significance of Federal Lands in the Eleven Western States, p. 158.
[143] National Association of Tax Administrators: Revenue Administration, 1945, pp. 50–51; 1946, p. 43.
[144] Federal, State, and Local Government Fiscal Relations, p. 284.
[145] See for example the testimony of Francis V. Keesling, Jr., at the (unpublished) hearings held before the House Public Lands Committee, March 2, 1949, p. 46.

642. There are several agencies of the Federal Government concerned with Government production or distribution of power. Among these are the Bureau of Reclamation which constructs and operates multipurpose water projects in connection with the irrigation of arid lands, the Corps of Engineers of the Army which constructs and operates multipurpose water projects in connection with river, harbor and flood control projects, the Tennessee Valley Authority which constructs and operates multipurpose water projects and fuel electric generating stations in the Tennessee Valley, the International Boundary and Water Commission, United States and Mexico, which has recently put into operation a dam which will have power facilities, and finally three regional administrations concerned solely with the marketing of power produced by the Bureau of Reclamation and the Corps of Engineers, namely, the Bonneville, Southwestern, and Southeastern Power Administrations.

643. The Bureau of Reclamation, as an incident of its major purpose in conserving, developing, and utilizing land and water resources of the West, has developed facilities for the generation of hydroelectric power. The Bureau is also the marketing agency for power generated at certain of the reservoir projects under the control of the Department of the Army. The property of the Bureau is exempt from taxation, and generally no payments in lieu of taxes are made with respect to the power properties of the Bureau.

644. An exception to the general rule is found in the case of Boulder Dam. At the present time $600,000 per year is being paid to Arizona and Nevada ($300,000 each) with respect to Boulder Dam.[146] As originally enacted,[147] the statute called for payment of 37½ percent of net income (after operating expenses, interest, and amortization payments) to be divided equally between the two States. The payment to Arizona and Nevada has been based on the premise that the Boulder Canyon Dam project might have been developed by private enterprise, and hence the payment is in effect in lieu of taxes. The 37½ percent figure was taken because of the existence of previously adopted legislation devoting 37½ percent of the proceeds from mineral lands and 37½ percent of the proceeds from licenses issued by the Federal Power Commission for private dams on public lands.[148] It is to be noted, however, that under this early Boulder Canyon Dam provision, the States would benefit only if there were an excess of revenues over expenses because, in the language of the act, they were to share only in the excess revenues.

645. The flat sum of $300,000 for each State was set in 1940 in lieu of the percentage figure because of a fear that on a readjustment of power rates as required by the Boulder Canyon Project Act, there might not be sufficient revenues to pay the States the sum they had theretofore been receiving. The report of the Senate Committee on Irrigation and Reclamation said:

> The Attorney General held that the project act's requirements did not include realization of excess revenues for payment to the States of Arizona and Nevada. The States of Nevada and Arizona, however, believed that they were going to receive from their share of 18¾ percent of excess revenues, a sum in lieu of the loss of taxation, substantially over $300,000 annually. It was undoubtedly the intent of Congress that the States of Arizona and Nevada should receive something in

[146] 43 U. S. C. 617c, 618–618o.
[147] 45 Stat. 1059, sec. 4 (b).
[148] Congressional Record, vol. 69, Apr. 26, 28, 1928, pp. 7250, 7391.

lieu of the loss of taxation by virtue of the fact that the project was constructed by the United States Government. The original contracts for the sale of power or falling water were based, under the act, on a competitive price. The competitive price fixed in these contracts assured to the States of Arizona and Nevada well over $300,000 annually. However, the act provided that the rates may be readjusted in 1945 and every 10 years thereafter. The readjustment of the rates by virtue of competitive conditions might have reduced the rate and, therefore, the excess earnings.[149]

646. It may also be noted that the Boulder Dam project, authorized in 1928, was the first major departure from the single-purpose irrigation projects that formerly had been the rule, although there were some earlier much less important multiple-purpose projects. The Boulder Dam is truly a multipurpose structure. Development of other multipurpose projects has been rapid since the 1930's. As of December 31, 1953, the total installed capacity in powerplants constructed and operated by the Bureau of Reclamation was 4.6 million kilowatts. It is expected that ultimately the capacity of present and authorized plants will be raised to 8 million kilowatts.

647. The Corps of Engineers, Department of the Army, was first authorized to build multipurpose dams in the Flood Control Act of 1936. Currently, the corps operates multipurpose projects in connection with its functions of improving and maintaining rivers in the interest of navigation and flood control, and many of these multipurpose projects have power installations. No provision appears in the law for taxation of the property of the corps or for payments in lieu of taxes, but it is to be noted that, with respect to flood control, and river and harbor civil-works projects, the Chief of Engineers may provide needed school facilities for dependents of persons employed on construction projects, or enter into cooperative arrangements with local agencies for the operation of such facilities, expansion of local facilities at Federal expense, and for contributions to the increased cost to local agencies of providing the facilities.[150] The Fort Peck Act also authorizes payments to school districts serving the Fort Peck project, as reimbursement for educational facilities furnished to pupils who are dependents of persons engaged in maintenance, etc., of the project and living at or near Fort Peck on real property of the United States not subject to taxation by State or local agencies and upon which payments in lieu of taxes are not made by the United States. The payments are to be based on the ratio of the number of such pupils attending the schools to the total attendance.[151] As of December 31, 1953, the total installed capacity in powerplants constructed and operated by the Corps of Engineers was 2.2 million kilowatts; the ultimate expected total is 8.1 million kilowatts.

648. Special legislation has also been adopted to care for the education of children of certain Federal employees, namely the children of employees of the Boulder Canyon project living in Boulder City, Nev. When the legislation was adopted in 1948, nearly half the children enrolled in Boulder City schools were children of Government employees, living on tax-exempt Federal property. Special items in Interior Department Appropriation bills from 1940 through 1947 regularly provided for payments to the school district of about 20 percent of the total school budget, but the item was omitted during the

[149] S. Rept. No. 1784, 76th Cong., 3d sess., p. 3.
[150] 60 Stat. 637–638, 642–643.
[151] 16 U. S. C. 833q.

process of enactment of the 1948 act.[152] Hence basic legislation was adopted in 1948 to provide that payment should be made to the Boulder City School District for the fiscal years 1948 to 1951 as reimbursement for the actual cost of instruction of pupils of dependents of employees of the United States living in (or in the immediate vicinity of) Boulder City. The reimbursement was fixed at not exceeding $65 per semester per pupil. The limiting years were inserted with the hope that some general permanent legislation applicable to all similar situations would be adopted by 1951.

649. The Columbia Basin Project (Grand Coulee Dam project) Act of March 10, 1943 authorizes the Secretary of the Interior to enter into agreements to pay annual sums in lieu of taxes to any State or political subdivision with respect to any real property located therein, such payments to be made out of funds derived from leasing of lands.[153] Sums so paid shall not exceed the taxes that would be due if the property were not tax-exempt. The act also provides that any public lands acquired shall be subject to legal assessment or taxation by any irrigation, reclamation, and conservancy district in the State of Washington in the same manner and to the same extent as privately owned lands. The act, as the Secretary of the Interior wrote, anticipated the local taxing problems which would arise out of the acquisition of lands by the United States.[154]

650. The Tennessee Valley Authority was set up in 1933 for the comprehensive development of the Tennessee Valley for all purposes, including the maximum development of electric power consistent with flood control and navigation. As of December 31, 1953, the total installed capacity in powerplants constructed and operated by the TVA was 5.1 million kilowatts, with an expected ultimate capacity of 9.4 million kilowatts. The Authority pays no taxes on its properties nor makes payments in lieu of taxes, to the States and local units except that it does pay out 5 percent of the gross proceeds from the sale of electric power. This payment is discussed more fully in paragraphs 727, 733.

651. The International Boundary and Water Commission, United States and Mexico, has recently put into operation a dam which will have waterpower facilities. No provision is made for the payment of taxes on the property of the Commission.

652. The Bonneville Power Administration (Department of the Interior) markets the electric energy generated at Federal multipurpose projects in the Pacific Northwest, including projects of both the Corps of Engineers and the Bureau of Reclamation. The Southwestern Power Administration (Department of the Interior) functions administratively and technically for and on behalf of the Secretary of the Interior in all activities connected with the marketing of surplus electric power generated at reservoir projects under the control of the Corps of Engineers in Arkansas, Louisiana, and parts of Kansas, Missouri, Oklahoma, and Texas. The Southeastern Power Administration operates similarly in West Virginia, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee and Kentucky. The property of these administrations is apparently tax-exempt.

[152] S. Rept. No. 1779, 80th Cong., 2d sess.
[153] 16 U. S. C. 835c-1.
[154] S. Rept. No. 1763, 77th Cong., 2d sess., p. 5.

653. The Rural Electrification Administration does not normally operate power facilities. Its function is the making of loans for facilities to bring central station electric service to rural people who do not have it. Although it may not be the purpose of the REA to operate power facilities, it may actually operate foreclosed properties for not more than 5 years. No provision is made for the payment of taxes on property acquired by the Administration.

654. The committee on payments in lieu of taxes of the National Association of Tax Administrators in its 1946 report recommended that power property of Federal agencies should be subject to tax to the same extent as privately owned property.[155] There have been other similar recommendations. The Bureau of the Budget bill includes the generation of electric energy as an industrial activity and brings property used primarily therefor acquired after the cutoff date (see par. 833) within the scope of section 101 providing for payments on certain property serving national interests. The whole subject of industrial and commercial property is discussed separately under the heading "Commercial and Industrial Property" (see pars. 441–453) and will not be repeated here. It should be noted, however, that the provision for paying $300,000 a year to each of the States of Arizona and Nevada is continued but the bill provides that any payments made thereunder with respect to the Boulder Canyon project shall be deducted from the flat $300,000 due each State (sec. 101 (e)). The Lane bill does not except power properties from its broad provisions for in-lieu payments.

655. In commenting on the Bureau of the Budget bill, the Department of Justice raised certain questions about the desirability of taxing such projects. The Department said:

> Many flood-control projects, which benefit the local community, provide incidentally for the production of power. Under existing law, flood-control projects are authorized upon a showing that they are in aid of navigation. The production of electrical energy is authorized as an incident of the project and is not considered as one of its primary functions. However, the commission to be established under title IV of the bill might determine that the flood-control project was primarily for industrial purposes and, as such, subject to the payment provided for in the bill. Furthermore, flood-control projects are usually developed on low-cost land in mountainous terrain. The loss of tax revenue in such regions would be nominal and thus to tax the property as industrial would be to grant a substantial income to the local community where none had existed theretofore, a result not intended by the measure. The potential difficulty might possibly be met by striking "generation of electrical energy" from the definition in section 3 (g), or by specifically excluding flood-control projects from the purview of the act. In any event it is suggested that dams and dam sites be excluded from any valuation to be made, because they usually have a greater relationship to the improvement of navigation than to the production of power.[156]

PRISONS, REFORMATORIES, ETC.

656. Prisons, reformatories, and other correctional institutions are exempt from taxes and no in-lieu payments are made with respect to them.

657. Proposals for taxation or in-lieu payments do not usually provide for including prisons, reformatories, narcotic farms, etc., within their terms. However, the committee on payments in lieu of taxes of the National Association of Tax Administrators reported in 1945 that

[155] National Association of Tax Administrators: Revenue Administration, 1946, p. 43.
[156] Letter from the Department of Justice to the House Committee on Interior and Insular Affairs, March 4, 1952.

it was their belief that in certain cases prisons, reformatories, narcotic farms, etc., have created tax losses which are not always equitable as a local contribution. It is argued that they (along with other properties) have sometimes been developed upon lands of high value for tax purposes, and the resulting Federal immunity has affected local ability to furnish necessary governmental protection and service. The argument is made that each project should be studied, its cost in tax revenue loss to the local and State governments determined, the burden of extra local cost of service fixed, and the gains, direct and indirect, to local and State governments used as an offset so that a fair in-lieu payment could be agreed upon.[157] The 1943 Treasury study, although conceding that some of these properties may be construed as of doubtful benefit to the local areas within which the property is situated, concluded that the tax loss was normally not significant and no case for payments was apparent.[158]

658. The Budget Bureau bill and the Lane bill both continue to exempt this type of property. However, the Budget Bureau bill (sec. 103 (d), 104) does provide for declining payments over a 10-year transition period where the Federal Government acquires properties that had been on the local tax rolls at the time of acquisition. Transition payments are discussed at paragraphs 841–846.

PUBLIC LANDS

661. "Public lands" is a term which usually is meant to include all lands owned by the Federal Government. "Public domain" is something less than that, and usually means all public lands except individual tracts acquired by the Federal Government. Sometimes public domain has been used as synonymous with the unreserved and unappropriated part of the original public domain; as thus used, national forests, national parks, and similar reservations are excluded.

662. The original public domain in the States was acquired through State cessions (1781–1802), the Louisiana Purchase (1803), the Red River Basin (1818), cession from Spain (1819), Oregon Compromise (1846), Mexican cession (1848), purchase from Texas (1850), Gadsden Purchase (1853). The area so acquired, plus the Territory of Alaska secured from Russia in 1867, is often referred to as the "original public domain." The original public domain covers about 75 percent of continental United States and all of Alaska. It amounted to 1,442 million acres in the States and 365 million acres in Alaska.[159]

663. The early plan with respect to public lands was that they should pass into private ownership as rapidly as possible. To this end, Congress enacted many "public land laws." Initially, the emphasis was on raising revenue for the Federal Government and on rewarding veterans with grants of land as bounties for military service. Later the laws were directed toward hastening the settlement and development of the country through such measures as grants to States and railroads and free homesteads to actual settlers. Under the public land laws, approximately 285 million acres have been deeded to homesteaders, 225 million acres have been granted to States for various public purposes, and 90 million acres to railroads to aid in financing construction, and about 430 million acres have been sold or otherwise

[157] National Association of Tax Administrators: Revenue Administration, 1945, p. 50.
[158] Federal, State, and Local Government Fiscal Relations, p. 285.
[159] U. S. Department of the Interior, Bureau of Land Management: The Public Domain in 1953.

alienated. In all, about 1 billion acres were disposed of, and around 400 million acres of public domain remain. The source from which most of the foregoing details were taken then goes on to say:

> Although the original intent of the Government was to pass the public domain rapidly to private ownership, even in the early days of the Republic reservations of public-domain lands were made from time to time, setting aside areas needed for public purposes, such as for military establishments and for supplies of naval stores. With the increasing evidence of depletion of the richer and more accessible supplies of national resources, a policy of conservation gradually developed, including, among other things, the retention in Federal ownership of public-domain lands valuable for the conservation of natural resources.[160]

664. In addition to retaining vast areas of public-domain land, the Federal Government has found it advisable or necessary to acquire from private owners specific tracts for specific purposes. During the period 1937–45, about two-thirds of the increases in Federal holdings were accounted for by purchases for the armed services. Total holdings of all public land now slightly exceed 450 million acres of which 90 percent are public-domain lands and 10 percent are acquired lands.

665. Federal holdings are located in all the States and vary from 85 percent of the area of Nevada to 0.3 percent of Iowa. Almost 90 percent of all Federal lands in the States are located in the 11 Far Western States, where the Federal Government owns 54 percent of the total area. Federal lands comprise about 24 percent of the total area of the United States.[161] Since Ohio was admitted to the Union in 1803 the Government has been paying public land States 3 to 5 percent (now 5 percent) of the net receipts from the sale of public lands within their borders. When the Bureau of Land Management was recently given authority to sell unreserved timber and other materials, provision was made to grant the States 5 percent of the net income from such sources also.[162] The various acts have provided for the use by the States of the proceeds for roads, schools, canals, irrigation and levees, internal improvements or improving the navigation of rivers.[163] The yield to the States is about $70,000 per year.

666. The act creating the Federal Power Commission and providing for the licensing of dams in national forests or on public lands, further provided that 37½ percent of the funds derived from such licenses should be paid to the States in which the lands are located.[164] The yield to the States has been averaging around $35,000.

667. Special legislation applicable to Alaska was adopted in 1915 and 1939 applicable to public lands specially reserved for school and other educational purposes. The income derived from the sale of timber and disposition of such lands or minerals thereon is set apart as a permanent fund of the Territory to be invested, and the income shall be expended as the territorial legislature may prescribe for the benefit of the public schools or of the agricultural college and school of mines.[165] Annual payments under this legislation are currently running about $700 per year.

668. It may be noted that question has been raised as to whether or not the States should not be allowed to share in the revenues from

[160] Senzel, Irving: Increase in Federal Land Ownership, 1937–1945. Department of the Interior, Bureau of Land Management, 1949, p. 4.
[161] U. S. Department of the Interior, Bureau of Land Management: The Public Domain in 1953.
[162] 43 U. S. C. 1187.
[163] Notz, Rebecca L.: Federal Grants-in-Aid to States, Etc. Washington, Library of Congress, Legislative Reference Service, 1952, p. 46.
[164] 16 U. S. C. 810.
[165] 48 U. S. C. 353.

submerged lands beyond their historic boundaries in the same way that the public lands States share in the revenue from public lands.[166]

669. There has been frequent argument put forth to the effect that many States are greatly handicapped because the Federal Government owns such a large portion of their total land area. They have argued frequently that they should be entitled to impose a tax on all such public lands, contending that continued large Federal holdings deprive them of sovereignty and anticipated tax revenue.

670. The 1943 Treasury study briefly summarized the argument against such taxation as follows:

* * * Since the bulk of the land was never taxable, and local governments were organized with reference to that fact, it is not suggested that any new departure be made in payments on account of these holdings as such. Most of the unallocated public domain is of low value, does not involve serious public costs, and where productive of revenue, such revenues are shared. While the percentages of revenue sharing are not uniform and apparently quite arbitrarily determined, the arrangements are of long standing and need not be disturbed. Actually, Federal grants of money and land, reclamation, and other development-fund expenditures, have been designed to cast extra benefits upon public-land States, usually in contemplation of the extent of Federal holdings. Conservation of land and regulated private use have the effect of stabilizing the economy and increasing taxable values in the area, including those of cattle and other personalty.[167]

671. The argument against taxation as proposed in the predecessor of the present Lane bill, has been stated at some length by the Department of the Interior as follows:

The provisions for payments in lieu of taxes in H. R. 1356 cover public-domain lands as well as acquired lands. The Department of the Interior consistently has opposed the imposition of ad valorem taxes, or their equivalent, on lands remaining in, or withdrawn from, the original public domain of the United States. This opposition has been based on the facts that, with minor exceptions, public-domain lands never have formed a part of the tax base of any local government, that local governments have not been built up on the basis of tax revenues from such lands, that throughout the greater portion of these lands the occupancy is sparse and the use is light, and that the need for local public services created by the lands is nonexistent, or these services are provided, at least in part, by the Federal Government.

These arguments against payments in lieu of taxes on public domain lands are valid, I believe; therefore I should prefer that public domain lands be exempted from the provisions of any bill providing for ad valorem payments in lieu of taxes on Federal lands. I appreciate the difficulty experienced by counties containing a large proportion of public domain in financing governmental services, however, and I note that the Department of Agriculture apparently has agreed to ad valorem payment in lieu of taxes, not to exceed three-fourths of 1 percent, on the appraised value of lands in national forests, including public-domain lands.

If ad valorem payments in lieu of taxes on public domain lands are to be made to States and local governments, lands such as those in grazing districts, that are permitted to private users for commercial purposes at rates which, on account of pressure of users and their representatives, are held to considerably less than are paid for use of comparable privately owned lands, should be appraised on the basis of the existing Federal income from such lands, rather than of the income which private owners might receive from them. I should like to reiterate, furthermore, that many of the public lands have no economic use and therefore should not be subjected to payments in lieu of taxes under any circumstances, and that the bulk of the unreserved, unappropriated public domain lands have such low productivity that they should be appraised at low values, in most instances lower than the traditional minimum price of $1.25 an acre.[168]

[166] See remarks of Senator Ellender, of Louisiana, in daily Congressional Record, June 25, 1953, pp. 7451-7457.

[167] Federal, State, and Local Government Fiscal Relations, p. 290.

[168] Letter from the Department of the Interior to the House Committee on Interior and Insular Affairs, May 26, 1949.

672. The last quoted letter also pointed out:

My third objection, or set of objections, is to the basis of the proposed payments to States and local governmental units in lieu of taxes. Section 5 (a) of the bill declares it to be the policy of the United States Government with respect to Federal real property "That States and local governmental units shall not, by reason of Federal ownership or acquisition of real property, be deprived, without compensation, of revenue which, if it were not for Federal ownership, would accrue to State or local governmental units from taxation of said real property."

The implication in this declaration appears to be that were it not for Federal acquisition of property, or withholding of public domain property from disposal through reservation or withdrawal, all land would be in private ownership and would produce State or local tax revenue. This implication is not true with respect to much of the public domain land. The unreserved, unappropriated public domain lands aggregate about 175 million acres. These lands were open to various types of private entry for decades, and still are open to entry under certain restrictions. Largely they are the lands which are of such low productivity that no individual can afford to own them, and one of the principal reasons why an individual cannot afford to own them is that they will not produce sufficient revenue to pay the local taxes which inevitably will be levied against them if privately owned. Hundreds of thousands of acres of these lands are absolutely barren and have no economic on-site use. There would be no takers, even if such lands were offered at auction in unlimited quantities, with no minimum appraisal at which bids would be accepted.

Again, in those counties or States in which the public domain lands make up the major portion of the total land area, the tax rates on the privately owned land are higher than would be the case if all the lands were privately owned. In some instances the taxes on privately owned grazing lands are so high that the owners can afford to pay the taxes only because these lands can be used as base for the use of a much larger area of Federal grazing lands, sometimes at only nominal fees. It would not be equitable, therefore, to levy the same rates on the public lands as are now paid on the privately owned lands in order to determine the tax losses suffered by local governments from Federal land ownership.[169]

673. It appears too that some organizations of local officials recognize that there is merit in at least not full taxation of public domain lands. One states the problem in this way:

The problems arising from vast land holdings of the Federal Government in the public domain, chiefly in the Western States, should be resolved by the legislation. Public domain lands which never have comprised a part of the local tax base can be specially considered in the legislation since local governmental units are concerned primarily with the tax losses, i. e., removals from tax rolls, actually experienced. However, revenue-sharing arrangements now applicable to certain public domain lands should not be abolished.[170]

674. The Bureau of the Budget bill excludes public domain lands from its provisions on the grounds that the bill is concerned primarily with tax losses actually experienced. Revenue sharing arrangements applying to public domain lands are not superseded.[171] However, as previously noted, the Lane bill would provide for in-lieu payments.

QUARANTINE AND IMMIGRATION STATIONS

676. Quarantine and immigration stations are exempt from local taxation and from requirements for payments in lieu of taxes. Proposals for taxation or in-lieu payments with respect to Federal property do not usually specifically provide for including quarantine and immigration stations within their terms. However, the committee on payments in lieu of taxes of the National Association of Tax Administrators reported in 1945 that it was their belief that in certain

[169] The same.
[170] National Association of County Officials: Why . . . 1953, p. 9.
[171] U. S. Bureau of the Budget: Executive Communication No. 722, Regarding Payments in Lieu of Taxes, August 16, 1951, p. 7.

cases quarantine and immigration stations have created tax losses which are not always equitable as a local contribution. It is argued that they (along with other properties) have sometimes been developed upon lands of high value for tax purposes, and the resulting Federal immunity has affected local ability to furnish necessary governmental protection and service. The argument is made that each project should be studied, its cost in tax revenue loss to the local and State governments determined, the burden of extra local cost to service fixed, and the gains, direct and indirect, to local and State governments (if any) used as an offset so that a fair in-lieu payment could be agreed upon.[172]

677. The Budget Bureau bill (sec. 103 (d)) continues to exempt quarantine stations but (sec. 104) does provide for declining payments over a 10-year transition period where the Federal Government has acquired properties that had been on the local tax rolls at the time of acquisition. Transition payments are discussed at (par. 841–846). The bill is silent as to immigration stations. The Department of Justice, which has jurisdiction over immigration stations, in commenting on the Budget Bureau bill, recommended that immigration stations be specifically added to the list of exempt property.[173] The Department felt that immigration stations were intended to be included in the words "facilities used in the police and regulatory functions of the Federal Government," but to remove any doubt the Department requested that immigration stations be specifically added to the exempt list. The Lane bill specifically exempts both quarantine and immigration stations.

RECLAMATION PROPERTY

681. The Reclamation Service (now the Bureau of Reclamation) was created in 1902 to construct irrigation works to reclaim the arid and semiarid lands of 17 (formerly 16) Western States. Incidental to these operations, there are facilities for the generation of hydroelectric power, drainage and flood control, improvement of navigation, etc. Up to June 30, 1953, the total cost of all plant, property, and equipment of all reclamation projects amounted to $2.4 billion.[174] Including projects authorized, the total ultimate investments of Federal funds will approximate $6.7 billion.[175]

682. As of 1950, the Bureau administered 9.3 million acres of reserved public domain and 0.6 million acres of acquired land in continental United States. The holdings of the Bureau are limited largely to reserved public domain land in proposed Federal projects not yet appraised with reference to feasibility, and to public domain and acquired land in projects that are in process of development and disposition. The only land held permanently is that used for irrigation facilities, such as dams, reservoirs, and canals.[176] The works (for delivering irrigation water to lands on 71 operating projects) include 116 storage and 74 diversion dams, more than 18,500 miles of canals and laterals, 5,600 miles of drains, and 354 major pumping plants. It should be noted, however, that though practically all the holdings

[172] National Association of State Tax Administrators: Revenue Administration, 1945, p. 50.
[173] Letter from the Department of Justice to the House Committee on Interior and Insular Affairs, March 4, 1952.
[174] Annual Report of the Secretary of the Interior, 1953, p. 202.
[175] U. S. Government Organizational Manual, 1953-54, p. 205.
[176] Davidson, R. D.: Federal and State Rural Lands. U. S. Department of Agriculture Circular No. 909, 1950, p. 8.

of the Bureau are destined for private ownership, the fact is that much of the area will remain for a long time in Federal ownership.

683. This type of Federal ownership of property is one instance of Federal ownership designed especially to help the people of the area in which the property is held, and there can be no question that the Federal installations increase the value of millions of acres of affected land. It seems clear that any State or local efforts to tax all the properties held for reclamation projects would have some element of unfairness about them. This is especially true in those States which exempt the land and works of special improvement enterprises as irrigation and drainage districts. However, like so many other cases, the general good is advanced, but there are instances of injury to the economy of particular persons or localities. Particular local areas have their taxrolls reduced when the Bureau acquires private lands, and particular communities may be injured when they have to provide school, police, and other services in connection with construction and operational activities.

684. Generally the lands and property of the Bureau of Reclamation are exempt from taxation and no payments in lieu of taxation are made. One important exception is Boulder Dam. Under the act as presently written, Arizona and Nevada each receive $300,000 each year from the revenues derived from the operation of the Boulder Canyon project.[177] As originally enacted, the statute called for payment of 37½ percent of its net income (after operating expenses, interest, and amortization payments) to be divided equally between the States.[178]

685. The Bureau of Reclamation has also been making some payments in lieu of taxes with respect to particular projects. Thus it is said that $10,000 a year transitional payments are being made for 10 years with respect to 8,350 acres of acquired lands on the Big Thompson project in Colorado.[179] It is also noted that tax equivalent payments are being made pending the development of irrigation systems on 219,000 acres of land in Washington.[180]

686. Finally it may be noted that there have been and are instances in which the Federal Government has supplied and maintained school buildings or the contractor has been required to make suitable arrangements for the education of the children of Federal employees as well as those of the contractor. In other cases the law has provided that payments may be made to local school districts where an undue burden is imposed by reason of the attendance of children of employees working on the construction of Bureau of Reclamation projects.[181] Such payments shall be made out of funds available for the construction. A tuition charge of $25 per semester shall be collected by the Bureau from each such child. It should be noted, however, that hereafter funds for the purposes set forth above will come from Public Laws 815 and 874 funds, as amended.[182]

687. The 1943 Treasury study concluded that payments to local governments do not appear justified, either with respect to the public lands or the taxable private land acquired for works. The affected States benefit mainly from the expenditure of the reclamation fund

[177] 43 U. S. C. 617c, 618o.
[178] A further discussion of the history of this law will be found in pars. 644–646.
[179] National Education Association: Status and Fiscal Significance of Federal Land Holdings in the Eleven Western States, 1950, p. 161.
[180] The same, p. 161.
[181] 43 U. S. C. 385a–385c.
[182] Office of Education: Federal Funds for Education, 1950–51 and 1951–52, p. 68.

created out of public land sales, royalties, and repayment of construction costs. Further, the land and works of special land improvement enterprises such as irrigation and drainage districts are customarily exempted by State and local law. The study then concluded with a recommendation that if private taxable lands are purchased by the Federal Government merely for purposes of controlling land speculation, submission to local taxation or payments equivalent to taxes would be justified.[183]

688. The Bureau of the Budget bill (sec. 103 (b)) specifically exempts local irrigation projects, but other irrigation project property acquired after the cutoff date (see par. 833) presumably would be subject to in lieu payments. The Lane bill makes no provision for excluding these properties from its required in lieu payments.

RECONSTRUCTION FINANCE CORPORATION PROPERTY

691. The Reconstruction Finance Corporation was organized and went into operation in 1932. As originally created it was designed to provide emergency financial facilities for distressed banks and other financial institutions, and to aid in financing agriculture, commerce, industry, and railroads. Its functions were expanded from time to time, and during World War II it provided financing for plant conversion and construction, working capital, mining operations, and other activities and itself to provide war production facilities, stockpile strategic and critical materials, and to undertake a wide range of other activities incident to the war effort. Many of these activities it conducted through subsidiary corporations, whose operations so far as they were continued after the war were absorbed into the parent Reconstruction Finance Corporation. The Reconstruction Finance Corporation will expire on June 30, 1954. Its lending authority was terminated as of September 28, 1953. Liquidation will go forward principally under the Secretary of the Treasury. However, it should be noted that some of the RFC programs such as civil defense loans, rubber, tin, and abaca fiber programs, loans to States, etc., defense production loans, etc., will continue under other agencies

692. The real property of the Corporation and its subsidiaries was specifically made subject to taxation and in 1947 such property was also made subject to special assessments for local improvements.[184] Under the law as it was in operation during World War II,[185] many millions of dollars of property taxes were paid to States and localities on war plants owned by the Defense Plant Corporation and leased to private contractors. In the first instance, the payments were made by the contractor, but he ordinarily passed the cost on to the Federal Government. Assessed valuations were determined jointly by local and Federal officials, although the local officials had final authority as to assessed valuations subject to court review.

693. Problems arose with respect to these properties in several particulars. Among these (1) was the fact that long tax-free periods often elapsed between the time the properties were acquired by the United States and their actual transfer to the Defense Plant Corporation (the Defense Plant Corporation had no power of condemnation),

[183] Federal, State, and Local Government Fiscal Relations, p. 289.
[184] 16 U. S. C. 607.
[185] Most of the discussion in this and the succeeding paragraph is taken from Walter W. Heller, Taxation of Federally Owned Real Estate, Proceedings of the National Tax Association, 1945, pp. 149–152.

(2) tax-exempt War, Navy, or Maritime holdings often existed side by side with the taxed Defense Plant Corporation property, and local units (in some cases at least) attempted to recover taxes from all through higher burdens on the Defense Plant Corporation property, and (3) there existed numerous problems of determining what was real property because of differing State laws and the existence of the question of whether real property meant something which Congress conceived of as real property or what the State laws provided. The Supreme Court finally held that if under the State law certain property was real property for purposes of the State law, then it was real property for purposes of the Federal law.[186]

694. Additional problems have arisen since the dissolution of the subsidiary corporations of the Reconstruction Finance Corporation and the provisions made for the disposition of surplus property.[187] By legislation in 1950,[188] it was provided that sums in lieu of taxes be paid on real property declared surplus by Government corporations pursuant to the Surplus Property Act of 1944,[189] where legal title to such property remained in any such Government corporation. The problem arises from the fact that it has been held [190] that when custody and control of surplus property are transferred out of the Reconstruction Finance Corporation to a Government agency the receiving agency has no authority to pay taxes, or sums in lieu of taxes, even though legal title remains in the Reconstruction Finance Corporation. Pursuant to these decisions, General Services Administration has informed that it would not pay taxes or sums in lieu of taxes in the future on RFC declarations of 1944 act surplus real property, even though legal title remained in the Reconstruction Finance Corporation.[191]

695. A bill (H. R. 5605) designed especially to correct this situation was introduced on June 8, 1953 by Representative Hillelson, of Missouri. Hearings were held on the bill during July 20 and 21, 1953,[192] and it was reported by the committee on February 22, 1954 (H. Rept. 1217). The bill provides that when taxable real property which has been on the local tax rolls is transferred by certain Government corporations to other Government agencies it shall be subject to payments in lieu of taxes; such property leased for commercial purposes shall be subject to full taxes.

696. A possible weakness of this type of legislation is that a potential transferee agency instead of accepting a transfer of property formerly taxed to another Government corporation could instead acquire other tax-free Government property or buy privately owned taxed property and secure its use tax free because these types of property would not be covered by this bill.

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[186] *Reconstruction Finance Corporation* v. *Bearer County* (328 U. S. 204 (1946)).

[187] See hearings before a special subcommittee of the House Committee on Government Operations, on H. R. 5505, July 20–21, 1953.

[188] 40 U. S. C. 490 (a) (9).

[189] 50 App. U. S. C. 1611–1646.

[190] *Sedgwick County* (*Kansas*) v. *United States* (123 Court of Claims 304 (1952)), and Decision B–108135 of the Comptroller General, 32 Decisions of the Comptroller 164 (1952).

[191] Letter from the General Services Administration to the House Committee on Interior and Insular Affairs, May 18, 1953.

[192] Hearings before a special committee of the House Committee on Government Operations, on H. R. 5605. The bill was endorsed by numerous individuals and the following associations: American Municipal Association, National Association of Assessing Officers, Federation of Tax Administrators, Municipal Finance Officers Association, National Institute of Municipal Law Officers, United States Conference of Mayors, National Association of County Officials, and the Council of State Governments, New Jersey State League of Municipalities, Conference of Mayors and Other Municipal Officials of the State of New York, League of California Cities, etc.

697. The Budget Bureau bill also provides for payments to the States on account of RFC property but provides for payments in lieu of taxes with respect to such property rather than direct taxation by the States and local units as is now done under existing law. However, by section 101 (c) of the bill, the RFC and other agencies can continue to pay taxes with respect to property which any Federal statute has previously made subject to State or local taxation, if the owning agency and the Commission (which the bill creates) agree that the policy of the act will be better served thereby. As the Bureau of the Budget stated in explaining its bill:

> * * * In jurisdictions where the limits on borrowing authority, for instance, depend upon the assessed value of all property, removal of such property as that of the Reconstruction Finance Corporation from its taxable status might create difficult financing problems. In some instances it may be more convenient for the financial agency, as well as the local governments, to continue existing tax arrangements.[193]

698. It is to be noted further that RFC property acquired through foreclosure of loans would, in all cases under the bill, continue to be subject to taxation, rather than payments in lieu of taxes.[194]

699. The Lane bill would provide for payments in lieu of taxes on RFC property.

RIVER AND HARBOR IMPROVEMENTS

701. River and harbor improvements, as those words are meant here, extend to improvements in aid of navigation, including Army engineers and Coast Guard properties, lighthouses, beacons, etc. Improvements for purposes of power and flood control are discussed elsewhere. (See pars. 476–482, 641–645.) Ordinarily, these improvements would involve little property that might be subject to taxation if privately owned, except dams that might be built, canal properties where canals are involved, and facilities incidental to the actual work on the improvements such as storage facilities, piers for dredges, etc. None of this property is subject to taxation nor are payments made in lieu of taxes. The 1943 Treasury study in commenting on facilities used for the furtherance of transportation and communication pointed out that the bulk of these properties are used to encourage and protect commerce, navigation, and communications. It concluded that this purely protective and stimulative exercise of the commerce function did not appear to warrant any payment. The considerations involved, the report continued, were the same as those involved in the case of general administrative functions.[195]

702. It has been frequently recommended that payments in lieu of taxes be made with respect to all properties held by the Federal Government, including those of a type under discussion here. However, it has been contended that many of the larger type of projects are for the most part, initiated in response to requests of local interests and are authorized by the Congress upon the basis of detailed reports and recommendations. In appropriate cases, estimates are made of the amount of taxes on property that may be removed from the tax rolls, and these estimates are taken into consideration when

[193] U. S. Bureau of the Budget: Executive Communication No. 722, Regarding Payments in Lieu of Taxes, August 16, 1951, p. 10.
[194] See title II of bill.
[195] Federal, State, and Local Government Fiscal Relations, p. 285.

weighing the public benefits and the total cost of the project. Thus real property acquired for these civil-works projects is often held pursuant to Federal law enacted in the particular interest of the citizens and communities in the locality of each project. The initiation of most civil-works projects depends upon a substantial assurance of local cooperation by the State and political subdivisions concerned. Local demand and the furnishing of these assurances to obtain many Federal activities necessitating the acquisition of real property, it is argued, is convincing evidence that communities do not consider loss of taxes important in comparison with concurrent benefits resulting from the projects. Therefore, the argument continues, while there are a few instances where payment of the equivalent of local taxes may represent a reasonable contribution, more often such payment would be an unwarranted bounty to certain localities at the expense of the Federal taxpayer.

703. The Bureau of the Budget bill (sec. 103 (b)) continues exemption for any property used or held primarily for services to the local public, and (sec. 103 (d)) specifically exempts Coast Guard aids to navigation. With respect to the latter, however, 10-year transitional payments (see pars. 845–846) will be made for properties acquired by the Federal Government and removed from the tax rolls after the cutoff date. Other properties would be subject to in-lieu payments. Also, all such properties would be subject to in-lieu payments under the Lane bill.

704. In commenting on the Bureau of the Budget bill, the Tennessee Valley Authority recommended insertion of a clause which would specifically exempt navigation dams or the navigation portion of multiple-purpose dams from any property taxes to which they might otherwise be liable under the bill. In explaining its position, the TVA said:

> * * * It may be that some types of navigation facilities may properly be classified as industrial or commercial type properties if such a classification is to be recognized. We believe, however, that navigation dams and the navigation portion of multiple-purpose dams should be excluded from this classification, and that this exclusion should be accomplished expressly rather than by implication. We think there are two primary reasons why such properties should be so excluded: (*a*) these properties produce no revenue; and (*b*) they are of a type seldom constructed or operated by private enterprise, and on which, in any case, private enterprise is not taxed. With regard to the latter point, it is our understanding that in the few cases where private companies own and operate hydroelectric plants at dams which also contain navigation locks available for use by the general public—as in the case of the Keokuk Dam on the Mississippi River, and of Hales Bar Dam on the Tennessee River prior to its purchase by TVA—arrangements between the Federal Government and the power company normally provide for transfer of title to at least the lock to the Government. In any case, since a dam, like other property, is commonly assessed and taxed ad valorem on the basis of its earnings value, it would seem apparent that additional investment to provide navigation facilities for general public use would not be subject to taxation under private ownership and should not be subject to tax equivalent payments when owned by the Federal Government.[196]

SOIL CONSERVATION PROPERTY

706. The Soil Conservation Service of the Department of Agriculture as of December 31, 1949, held 7,415,084 acres of land under three

[196] Letter from the Tennessee Valley Authority to the House Committee on Interior and Insular Affairs, September 6, 1951.

separate programs. Of this amount, there were 7,332,060 acres of submarginal lands located in land utilization projects administered under title III of the Bankhead-Jones Farm Tenant Act, plus 75,538 acres which were in irrigation projects under the Wheeler-Case Act, and 7,486 acres in nursery and research areas not on title III land. Most of the land is grazing and forest land. As of January 1, 1954,, 80 land utilization projects in 30 States, totaling 7,049,923 acres were transferred to the Forest Service for administration. The Forest Service favors pending legislation which would authorize the sale of such of the lands in the land utilization projects as are suitable for return to private ownership.[197]

707. In the depression of the early 1930's the Government undertook to acquire submarginal lands that were hardly capable of supporting families under adequate living conditions. Purchases were made under various programs—Agricultural Adjustment Act, National Industrial Recovery Act, Emergency Relief Act of 1935, and the Bankhead-Jones Farm Tenant Act of 1937. About 11 million acres were purchased under these programs. Some of it was added to national parks, some to national forests, some to national wildlife refuges, et cetera. About 7 million acres were retained under the Soil Conservation Service, and subsequently transferred to the Forest Service. About 6½ of the 7 million acres are currently used for grazing with less than 50,000 acres being used for crops.[198]

708. In enacting the Bankhead-Jones Farm Tenant Act, Congress provided that 25 percent of the revenues received from the use of submarginal lands now held by the Forest Service should be paid to the counties in which the lands are located. The proceeds are to be used by the counties for school or road purposes, or both.[199] About $440,000 a year is being set aside for the counties under this act.

709. Under authority of the Bankhead-Black Act, receipts from leasing of water conservation and utilization projects owned by the United States are used for payments in lieu of taxes to local government taxing units.[200] Similar payments are being made with respect to lands being prepared for irrigation and return to private ownership under the so-called Case-Wheeler Act.[201] Agreements may be entered into with a State or political subdivision or other taxing unit for the payment of sums based on the cost of the public or municipal services to be supplied, but also taking into consideration the benefits derived by the State or subdivision or other taxing unit from the project. Sums paid in lieu of taxes are currently running about $4,500 per year.

710. A 1944 act of Congress making appropriations for some 11 projects designed to improve runoff and waterflow retardation, and soil erosion prevention, provided that the Secretary of Agriculture should pay annually to counties in which acquired lands were located, a sum equal to 1 percent of the purchase price of the acquired lands, or if not acquired by purchase then 1 percent of their valuation at the time of acquisition.[202]

[197] Hearings before a subcommittee of the House Committee on Appropriations, on Department of Agriculture Appropriations for 1955, p. 738.
[198] Clawson, Marion. Uncle Sam's Acres. New York, Dodd, Mead & Co., 1951, pp. 139-140.
[199] 7 U. S. 1012.
[200] 40 U. S. C. 432-433. The last of the projects under this program is expected to be completed in 1957. (See House Appropriations Committee hearings on 1955 Agriculture Department Appropriations, p. 1363.)
[201] 16 U. S. C. 590z-8.
[202] 58 Stat. 905, sec. 13.

711. The 1943 Treasury study observed that property taxes might well be paid on certain conservation lands. The study said:

> Property for conservation projects (such as submarginal and cutover forest lands) might well pay a low, flat, average rate on value as of the time of acquisition. This would constitute a minimum guaranty, pending larger local receipts from a distribution of revenue when the property becomes revenue-producing. The flat rate would represent a rough adjustment to average tax yields on this type of property. The percentage of revenue shared would resemble a severance tax. This plan is considered feasible, not only for ease of administration in the case of large holdings of low value, but also as an approximation of what is considered to be good property-tax practice on depleted lands.[203]

712. In commenting on the Lane bill providing for Federal payments in lieu of taxes in an amount equal to the tax lost by reason of Federal ownership of such property, but taking into consideration any monetary benefits derived by the local unit by reason of such ownership, the Department of Agriculture observed that if any such bill should become law, it would greatly aggravate the administrative complexities involved in managing the lands.[204] The Bureau of the Budget bill (sec. 103 (c), 104) exempts any property used or held for land-utilization projects except that transition payments (see pars. 845–846) may be made on tax properties acquired since the cutoff date (see par. 833).

SURPLUS PROPERTY

716. There is much property now held by the United States which is no longer being used for the purpose for which it was acquired. Some of this property is being held for sale, some of it is being leased, and some of it is just being held for no definite purpose. The General Services Administration and the Bureau of the Budget have recently initiated a joint survey of all real property holdings that are surplus to each agency (except public domain lands such as national parks, national forests, and other areas obtained and retained under law for purposes of conservation of natural resources), with the objective of disposing of such surplus and thus returning property sold to the State and local tax rolls.[205]

717. Numerous problems have arisen with respect to surplus property. Even people who will concede that Federal property which is being used for a governmental purpose should be tax-exempt, feel differently when (for example) the particular property is being rented to private operators or simply lies idle. One problem with respect to property being sold was solved by the Supreme Court. This grew out of the practice of the United States to retain legal title to transferred property until the full price was paid. The contention had been made that so long as the Government held title the property was exempt. The Supreme Court, however, held that even though the United States may retain title to property being sold under a conditional sales contract until full payment of the purchase price is paid, the property nevertheless is subject to local taxation.[206]

718. With respect to property not being used by the United States and which is lying idle or being leased to private interests (especially the latter), there is a very definite feeling in some quarters that

[203] Federal, State, and Local Government Fiscal Relations, p. 271.
[204] Letter from the Department to the House Committee on Interior and Insular Affairs, May 1, 1953.
[205] Joint press release of the General Services Administration and the Bureau of the Budget, December 30, 1953.
[206] *S. R. A. Inc.* v. *Minnesota* (327 U. S. 558 (1946)).

such property should be subject to local property taxes. Recommendations for taxation of some or all of this type of property have been made from time to time.[207] The statement has been made that if this property were subject to tax, a wholesome byproduct would be that the Federal agencies would be a little more anxious to dispose of unneeded property which would thus find its way on to the permanent tax rolls as private property. It should be noted that Federal officials have argued that the fact that Federal property is idle or only partly used is one reason why consideration should be given to its being exempt from full local property tax burdens, because otherwise the local community would receive a windfall because the facilities would need no municipal services.[208]

719. By legislation in 1950,[209] real property declared surplus by Government corporations, pursuant to the Surplus Property Act of 1944, was made subject to payment of sums in lieu of taxes, so long as legal title remained in the corporation. Substantially similar authority for such payments existed in appropriation acts relating to the former War Assets Administration, whose functions had been transferred to the General Services Administration. When real property owned by a Government corporation, such as the Reconstruction Finance Corporation, was declared surplus, legal title remained in the corporation unless it was conveyed to the United States or sold to outside interests. It had been the practice for Government corporations to pay sums in lieu of taxes on real property, title to which rested in them as distinguished from the United States. The above-referred-to 1950 legislation, based on the belief that it was advisable to continue this authority insofar as the inventory of property declared surplus under the provisions of the 1944 act was concerned, continued this authority. The authority applies only to property declared surplus before July 1, 1949, because the 1944 Surplus Property Act was itself repealed effective on that date.[210]

720. It should be noted that the General Services Administration has declared that it will make no payments in lieu of taxes with respect to properties held by it as surplus, even though title is retained by the Reconstruction Finance Corporation.[211] This action results from two decisions [212] holding that when custody and accountability of surplus property is transferred out of the Reconstruction Finance Corporation to a Government agency, the receiving agency has no authority to pay taxes or sums in lieu of taxes even though the legal title remains in the Reconstruction Finance Corporation.

721. The Bureau of the Budget bill (sec. 202) specifically provides for State and local taxation of property under lease to taxable persons, or sold under a conditional sales contract.

[207] See the Report of the Committee on Payments in Lieu of Taxes of the National Association of Tax Administrators, in Revenue Administration, 1946, p. 43. See also in the same volume Coe A. McKenna's "Taxation of Federally Owned Property", p. 38.

[208] Reynolds, W. E. Hearings before a special subcommittee of the House Committee on Government Operations, on H. R. 5605, July 21, 1953, p. 42.

[209] 40 U. S. C. 490 (a) (9) (64 Stat. 850, act of Sept. 5, 1950).

[210] Most of the foregoing information is taken from S. Rept. 2140, 81st Cong., 2d sess., p. 10.

[211] Letter from the General Services Administration to the House Committee on Interior and Insular Affairs, May 18, 1953.

[212] *Sedgwick County (Kansas)* v. *United States* (123 Court of Claims 304 (1952)), and Decision B-108135 of the Comptroller General, 32 Decisions of the Comptroller 164 (1952).

TENNESSEE VALLEY AUTHORITY PROPERTY

726. The Tennessee Valley Authority is a corporation created by act of Congress in 1933.[213] By the statute, the Authority took over Wilson Dam and appurtenant plants at Muscle Shoals, Ala., with directions to operate them in the interest of national defense and for the development of agricultural fertilizer. The statute further provided for the development of the Tennessee River and its tributaries in the interest of navigation, the control of floods, and the generation and disposition of electric power. The TVA's programs are financed by congressional appropriations and by proceeds from its operations, principally the sale of power and fertilizer. After allowance for depreciation, the value of the Authority's land, structures and equipment approximates $1.6 billion.

727. All property of the Tennessee Valley Authority is exempt from State and local taxes, as well as all other taxes that might be imposed on its franchises and income. Provision is made, however, for payments to the States and local units in lieu of taxes. Payments are made in each State in which the Authority conducts power operations and holds power property. The payments are equal to 5 percent of the gross proceeds derived from the sale of power, and are apportioned by a formula which gives equal weight to power sales and to power property. Thus the payments to any State depend on (1) the ratio of power sales within that State to total power sales, and (2) the ratio of TVA power property within the State to total TVA power property. If the amount thus apportioned to any State for any year is less than the former State and local property taxes on acquired power property, the difference is made up by a supplementary payment. Provision is made for payments equal to former county and district property taxes directly to counties affected, and the amounts so paid are deducted from amounts otherwise due to the respective States. Amounts equal to the former municipal property taxes are included in the payments to the States. Modifying provisions require payments of at least $10,000 to each State (including payments to counties therein).[214]

728. In the development of the legislation for TVA payments in lieu of taxes there was much discussion and argument.[215] It was argued in behalf of payments that there was a need for a tax or a substitute payment on hydroelectric power generated from water resources of the States and sold in the market. Payments to replace taxes levied on land acquired for reservoir purposes were advocated. Other arguments were based on the need for compensation to the States for taxes that they would collect from the electric power phase of the program if it were in private ownership.

729. The major arguments against payments were based on the danger of moving in the direction of State and local taxation of Federal property, the inconsistency of using Federal funds to develop an area and making payments in lieu of taxes on such developments, and the unfairness to the Federal taxpayers of making in-lieu payments to States without reference to the earnings of the project and without providing for the retirement of the Federal investment.

[213] 16 U. S. C. 831–831dd.
[214] 16 U. S. C. 831.
[215] See the publication by the TVA entitled "Report on Section 13 of the TVA Act," December 1944. (Mimeographed.)

730. Provisions for payments were included in the Muscle Shoals bills of 1928 and 1931 which were vetoed by Presidents Coolidge and Hoover. However, the language of the 1931 bill was substantially that which was included in section 13 of the TVA Act of 1933, as approved by President Roosevelt. As enacted it provided for payment to Alabama and Tennessee of 5 percent of the gross proceeds from the sale of hydroelectric power. The 5 percent was payable to the State in which the power was generated. On the additional generation at main-stream dams attributable to reservoir dams constructed on tributary streams the 5 percent was divided equally between the two States.

731. By 1940, the provisions of the 1933 act were inadequate to meet the conditions presented by the extension of the TVA program into other States and by the purchase of important power properties from private utilities. Furthermore, experience had demonstrated that the place of generation alone was not a satisfactory basis for interstate allocation of a payment in lieu of taxes on a unified power system including a number of interconnected steam and hydro plants. These and various other issues came up for consideration when the States and counties became concerned over the prospects of tax losses arising from the purchase of the Tennessee Electric Power Co. properties in 1939.

732. Hearings were held by the House Military Affairs Committee and the Senate Committee on Agriculture and Forestry, but enactment of a bill came only in the form of a rider attached by the Senate to the Emergency Relief Appropriation Act for the fiscal year 1941.[216] It should be noted, however, that the form of the amendment had been previously worked out after considerable study and on the basis of recommendations jointly made by representatives of the TVA and of State and local governments in the area. Payments since that time have been made under that act.

733. The law as presently in effect has been set forth above, but it is to be noted here that by the terms of the act the 5-percent figure did not become effective until 1949. For the years 1941 to 1949, the percentage was graduated downward from 10 percent to 5-percent. The act further required the TVA to make a report by January 1, 1945, on the operation of its provisions. The general manager of the Authority in the previously cited report declared that the section "has proved generally successful in its operation to date. Special problems have arisen in connection with its administration and others will undoubtedly present themselves in the future. This, together with the general importance of payments in lieu of taxes by Federal agencies, indicates the need for continuing study of the subject." [217] More recently the TVA has expressed the belief that section 13 has operated, and is operating, as satisfactorily as any scheme of Federal taxpayments or in-lieu taxpayments is likely to operate, and that no change in it is desirable.[218]

734. Payments in lieu of taxes are currently running at the rate of approximately $3,600,000 per year. A statement issued by the Tennessee Valley Authority and reprinted in the Congressional Record [219] gives a State-by-State breakdown of a comparison of former

[216] 54 Stat. 626.
[217] Tennessee Valley Authority: Report on sec. 13 of the TVA Act. (Mimeographed.)
[218] Letter from the TVA to the House Committee on Interior and Insular Affairs, September 6, 1951.
[219] Congressional Record, Jan. 29, 1953, p. A346.

property taxes and tax equivalents paid by the TVA in fiscal year 1952. The brief text and the summary for all States combined is presented below:

The Tennessee Valley Authority during the fiscal year ended June 30, 1952, paid to 7 States and 135 counties a total of $3,036,207 in lieu of taxes as required under section 13 of the TVA Act, amended in 1940. During the same period, according to figures just compiled from the contractors' annual financial reports to TVA, property taxes and equivalents paid to State and local units of government by the municipalities and cooperative associations distributing TVA power amounted to $4,333,240.

The combined payments, totaling $7,369,447, exceed by $4,135,655 the property taxes formerly paid on all reservoir lands and power production and distribution properties when they were in private ownership. In comparison with this excess, the State and local business taxes, such as income, franchise, gross receipts, hydrogeneration, gasoline, and motor-vehicle levies, applicable to the properties under private ownership, have been estimated at about $857,000.

On the following page is a comparison of the State, county, district, and municipal ad valorem taxes formerly paid on reservoir lands and on power properties before their acquisition by the TVA and municipalities and cooperatives distributing TVA power, and the annual property taxes paid, and in-lieu payments made during the fiscal year ended June 30, 1952.

Comparison of former property taxes with ad valorem taxes and tax equivalent paid by TVA and its distributor contractors, fiscal year ended June 30, 1952

Former property taxes:	
On TVA property: [1]	
All reservoir land: [2]	
State and municipal	$44, 662
County and district	378, 085
Total	422, 747
Purchased power property:	
State and municipal	204, 747
County and district	962, 425
Total	1, 167, 172
On distributors' power property: [3]	
State and municipal	900, 873
County and district	743, 000
Total	1, 643, 873
Total former taxes	3, 233, 792
Tax and in-lieu payments:	
TVA payments:	
To States	1, 917, 047
To counties	1, 119, 160
Total	3, 036, 207
Distributor payments [4]	4, 333, 240
Total payments	7, 369, 447

[1] Average property tax levies for last 2 years properties were in private ownership, computed on basis of property held and operated by TVA on June 30, 1951.

[2] Reservoir land allocated to navigation and flood control as well as that allocated to power.

[3] Property tax levies for last year properties were in private ownership, computed on the basis of purchased properties acquired by the several distributors to June 30, 1951.

[4] To determine amount of ad valorem payments shown here, social security levies and various business taxes applicable to cooperatives in some States have been eliminated from taxes and tax equivalents aggregating $4,671,924 charged to operations by TVA power distributors for fiscal year 1952. Most of the municipal distributors make payments in lieu of taxes only to the owner municipalities. However, the Chattanooga, Knoxville, and Nashville power boards and several other cities in Tennessee, as well as all the municipal power boards in Kentucky and Virginia, also make payments to the counties in which they operate.

735. The proposed bill sponsored by the Bureau of the Budget (sec. 101 (d)) would continue the present provisions of section 13 for payments of a percentage of gross power proceeds to State and local governments, but it would further apply its provisions to nonpower properties acquired after the cutoff date. (See par. 833.) The TVA estimates that payments under this bill would considerably exceed those which would be made if section 13 were repealed, and TVA payments were made on both power property and nonpower property. The TVA has expressed itself as favoring the bill drawn by the Budget Bureau, subject to certain technical points which it raised.[220] The Lane bill would apply to TVA property even though it makes no provision for terminating the provision for distribution of 5 percent of the power proceeds.

VETERANS' ADMINISTRATION PROPERTY

736. The Veterans' Administration administers laws authorizing benefits for former members of the Armed Forces and for the dependents and other beneficiaries of deceased former members of the Armed Forces. The principal properties of the administration include its offices, hospitals, domiciliaries (homes), cemeteries, supply depots, publications depot, and records service center. According to the consolidated balanced sheet of the Veterans' Administration, as of June 30, 1953, the fixed assets of the Administration (valued at cost where available, or at the appraisal value) were valued at $1,075 million, divided as follows: land, buildings and plants—$786 million; construction and betterments in process, and leasehold improvements—$166 million; equipment—$123 million.[221]

737. Much of the property of the Veterans' Administration is of a nature that it would be tax-exempt under the laws of the several States even though privately owned, for example, hospitals, cemeteries, and domiciliaries (homes). The general subject of cemeteries and hospitals are discussed elsewhere. (See pars. 436, 511–514.) The Veterans' Administration already pays taxes, assessments and other charges on properties acquired by it under its loan-guaranty program of title III of the Servicemen's Readjustment Act of 1944, as amended.[222] All other property of the Administration is exempt from State and local taxes.

738. Most Veterans' Administration property would continue exempt under the Bureau of the Budget bill, although some property very likely would be subject to transition payments (see pars. 845–846) and payments with respect to foreclosed properties (see par. 491). Cemeteries and hospitals would be exempt under the Lane bill, but real property used for supply depots, forms depots, publications depot, and records service center would be subject to the provisions of the bill. There will be confusion with respect to the provisions of the Lane bill so far as it makes no reference to existing requirements for taxes and assessments on properties acquired under its loan-guaranty program.[223]

[220] Letter from the TVA to the House Committee on Interior and Insular Affairs, September 6, 1951.
[221] Annual Report of the Administration of Veterans' Affairs, 1953, p. 278.
[222] 38 U. S. C. 694j (a) (6).
[223] Letter from the Veterans' Administration to the House Committee on Interior and Insular Affairs, April 27, 1953.

WEATHER STATIONS

741. Weather stations are currently exempt from taxation and any in-lieu payments. An association of State tax officials saw no reason in 1946 for removing this exemption,[224] and the National Education Association study also would exempt these properties on the ground that they render a service particularly valuable to the local public.[225] The 1943 Treasury study also recommended continued tax exemption.[226] The Bureau of the Budget bill (sec. 103 (b)) continues to exempt them, but the Lane bill makes no provision for exempting them from its broad coverage.

WHARVES AND DOCKS

746. Wharves and docks would often fall into the category of commercial and industrial property and as such are included in the discussion above under that category (pars. 441–453). It may be further pointed out that the taking of the wharves and docks at Hoboken, N. J. (see par. 217), during World War I, constitutes one of the outstanding early examples of a taking of commercial property in which the Federal Government has long continued to hold title, but which it actually leases to private operators to the very considerable disadvantage of the affected municipality.

747. On the other hand, some wharves and docks are essentially nothing more than an extension of military property and as such would rate exemption as military property. (See pars. 561–567.) Likewise there are the wharves and docks of the Coast and Geodetic Survey which are used frequently for the benefit of the area in whose geographical area they lie.

748. Wharves and docks would be subject to taxation under the Lane bill, while under the Bureau of the Budget bill treatment would vary depending on date of acquisition (see par. 833), whether used for a local, national, or broad regional interest (see par. 821), and whether or not used in connection with a commercial or industrial undertaking (see pars. 441–453). One study specifically names the wharves and docks of the Coast and Geodetic Survey as a type of property which should be exempt,[227] but also suggests that at least part of the tax cost of permanent wharves and docks used by the military, since they serve national interests, should be borne by Federal taxpayers.[228]

WILDLIFE RESTORATION

(See pars. 466–472)

[224] National Association of Tax Administrators, Committee on Payments in Lieu of Taxes: Revenue Administration, 1946, p. 43.
[225] National Education Association: Status and Fiscal Significance of Federal Lands in the 11 Western States, 1950, p. 164.
[226] Federal, State, and Local Government Fiscal Relations. p. 284.
[227] National Education Association: Status and Fiscal Significance of Federal Lands in the 11 Western States, 1950. p. 164.
[228] The same, p. 166.

CHAPTER V

PROPOSALS FOR CHANGES IN THE LAW

A. Introduction

801. Basic to any decision for allowing State and local taxation of Federal property or making payments in lieu of taxes, is a decision on some general principles. What type of property should be included and which (if any) excluded? What type of payment should be made? Who should administer the law, what should the procedures be, should there be a right of appeal, etc.?

802. The simple statement of these questions fails completely to suggest the maze of complexity which confronts one who is looking for an answer to the problem. We can all agree that reasonable guides and standards for attaining equity between the States and the Federal Government should be established. It is quite a different thing to secure agreement on these guides and standards, and actually write them into an understandable statute.

803. Practically everybody who has examined the problem agrees that payments (taxes or in-lieu payments) should be made on some types of Federal property. And again practically everybody agrees that there are some properties which should be completely exempt from any payments. We can all agree that the cost of national functions and programs should not impose an undue burden on local taxpayers through Federal tax exemptions. But what is an "undue burden"? There is agreement that, insofar as feasible, the United States should avoid the impairment of the finances of State and local governments by reason of its acquisition of property. It is something else to find agreement on when the presence of Federal property is the

cause for any impairment of the finances of a particular State or local government, and if there is impairment how it should be corrected.

804. An example of the problem is illustrated by a general principle suggested in the 1943 report of the Federal Real Estate Board which recommended:

> Federal contributions ought not be made to specific local jurisdictions in such a way as to encourage perpetuation of undesirable or unnecessary units of Government or to impede reforms in the organization and functioning of local government.[1]

805. A representative of one group of local governments took exception to this. He argued:

> Of course it is a fine thing not to have uneconomical units, but we feel in regard to this problem it is not a Federal concern whether it is uneconomic or not. We feel it is a local concern. * * * We feel the money should go to the localities without discrimination * * *.[2]

806. In the same vein are warnings against requirements of "reasonable tax efforts" or "provision for services" on the part of local governments before payments to them could be made. Thus one organization has said:

> * * * Such requirements interfere unreasonably with local home rule and create the possibility of unreasonable demands being made by Federal owning agencies to a degree that no relief whatsoever would be afforded local government from certain payments. The cost of services demanded might more than offset the revenues received. There should be no Federal interference in determining local expenditures and policies.[3]

807. It is the hope of everyone interested in solving the problem to cover all situations, so far as possible, with general legislation providing for payments according to as few general principles as possible. However, because of the great diversity in types of Federal property, no single formula for payments could possibly bring about the desired balance between local and Federal interest. The answer apparently must be found in continued complete exemption of some property, the use of revenue-sharing arrangements in some cases, inlieu payments in others, and actual taxation in still other cases.

808. It would be desirable, however, if the amount and time of Federal payments could be regularized so that it would be predictable for local budgetary purposes. At the present time, in many cases, it is feast or famine. Sometimes payments come slow, sometimes fast, sometimes near the end of the year or not until the next year. This upsets local budgeting.

B. Property To Be Included

1. By type of property

816. The purpose of this section is to discuss which types of Federal property in general should be subject to taxation, inlieu payments, or sharing agreements, and which, if any, should be exempt from all taxes or payments. It will be recalled that chapter III summarizes the legal situation with respect to property in general, and chapter IV analyzes the existing treatment of numerous specific types of property

[1] Federal Contributions to States and Local Governmental Units With Respect to Federally Owned Real Estate, p. 13 (Message from the President of the United States, H. Doc. No. 216, 78th Cong., 1st sess.).
[2] Seegmiller, Keith L. Hearings (unpublished) before the House Committee on Public Lands, on H. R. 1356, June 21, 1949, p. 44.
[3] National Association of County Officials: Why . . . 1953, p. 10.

together with comments on proposals for alternative treatment. This chapter considers the proposed treatment of broad types of property.

817. It is occasionally argued that all (or substantially all) Federal property should be made subject to the same State and local property taxes as private property, and suggestions to this effect have been incorporated into bills introduced into Congress (see pars. 936–941). However, most students of the problem, including representatives of local governments who would benefit most under these bills, do not generally agree to the necessity of such a sweeping proposal. The concensus of opinion is that the Federal Government must insist on the maintenance of its constitutional immunity, even as the States do with respect to local taxation of State-owned property,[4] but allow for certain limited taxation or inlieu payments in certain designated types of cases.

818. Two types of property commonly recognized as entitled to exemption from taxes or inlieu payments are property used for services to the local public or held primarily for purposes which would create local exemptions under private ownership. An organization of local officials concedes this.[5] It contends, however, that when the removal of such property causes serious local financial loss, 10-year declining transition payments should be made, leaving at the end of the 10 years continuous payments on a 50-percent basis.

819. Accepting the argument that there should be some exceptions to any general rule for taxing all Federal property, it seems clear that one of the exceptions should be those types of Federal property which would be exempt under State laws when privately owned. For example, most State laws exempt privately owned nonprofit hospitals. It would seem logical to suppose that if a State exempted private hospitals, it should extend that exemption to Government hospitals. Likewise, States grant exemptions to universities and colleges. In such cases it would seem logical that, for example, West Point and the Naval Academy should be exempt. The Bureau of the Budget bill (sec. 103) gives effect to this statement and exempts from inlieu payments those Federal properties which, if privately owned and similarly used, would be exempt from taxation under the constitution or laws of the States in which the property is located. These properties would very likely also be exempt under the Lane bill which lays down the general principle (sec. 5 (c)) that Federal property should not bear any greater burden than the same property would if privately owned.

820. It seems equally clear that exemptions to property or provisions for payments with respect to property should be accorded or made depending upon the type of property rather than upon which agency at the moment has title to it or actually controls it. This principle is currently being violated in a substantial degree (e. g., pars. 693–695).

821. Some types of properties are so widely spread over the country that payments to local governments would result in very little redistribution of funds. In general, the more extensive or valuable courthouses, post offices, and other similar properties are in areas in which national tax collections are greatest. These are a type of property which, though there is a national interest in their use, the

[4] According to a 1950 report: "State owned property is exempted from local property taxation in 38 States. Ten States, on the other hand, permit local taxation of certain selected classes of property." Federation of Tax Administrators: Taxation of Publicly Owned Real Estate, p. 2 (Research Rept. No. 28, January 1950).
[5] National Association of County Officials: Why . . ., p. 9.

local service aspect predominates. This leads to the conclusion that the general type of property for which taxes (if any) should be paid or inlieu payments (if any) made is that property devoted to activities that are predominantly of national interest, while excluding those properties which are chiefly of local interest.

822. Public domain lands provide a real subject of controversy as to whether or not they should be subjected to any taxes or inlieu payments. A favorite example of the "injustice" of the situation is to show statistics indicating that 50 percent, 60 percent, 80 percent, 90 percent or some other percentage of the land area of a particular State or political subdivision is owned by the Federal Government and that the State or subdivision is thereby deprived of large sums of revenue to which it is entitled. The Department of the Interior has consistently opposed the imposition of ad valorem taxes, or their equivalent, on lands remaining in, or withdrawn from, the original public domain of the United States. This opposition has been based on the fact that, with minor exceptions, public domain lands never have formed part of the tax base of any local government, that local governments have not been built up on the basis of tax revenues from such lands, that throughout the greater portion of these lands the occupancy is sparse and the use is light, and that the need for local public services created by the lands is nonexistent, or these services are provided, at least in part, by the Federal Government. These points are discussed at greater length above (see pars. 661–674).

823. Federally owned properties which are acquired for proprietary or industrial purposes rather than purely governmental administrative functions, and which receive full local governmental services, should (it is usually logically argued) pay local taxes or the equivalent. Such properties as national defense facilities, industrial plants, powerplants, and certain wharves fall within this principle. This point is discussed at greater length above. (See pars. 441–453, 641–655.)

824. Likewise, property acquired by the Government to protect its financial interest (usually through foreclosure) in connection with loans or contracts of insurance or guaranty should be subject to the same taxes they bore in the hands of their prior owners, at least until put to permanent use by the Federal Government. This subject is discussed at greater length above. (See pars. 486–492.)

825. Finally, property sold by the United States to taxable persons under a conditional sale whereby the United States retains title to the property, and property owned by the United States and leased to taxable persons should be subject to State and local taxation. This subject is discussed at greater length above. (See pars. 716–721.)

826. Properties of the foregoing categories are usually properties which serve broad national or regional interests. One rather exhaustive study of the subject concludes that there are many Federal properties which primarily serve such broad national and regional interests that at least part of the tax cost of the real estate used for these activities should be borne by Federal taxpayers. The study includes the following properties as illustrative:

1. Nonindustrial properties used or held for military purposes such as camps, training areas, airfields, proving grounds, forts, schools, essentially self-contained federally owned housing projects on military reservations, and perhaps the traditional, permanent docks and piers, supply depots, warehouses, and storage yards.
2. Noncommercial properties of the Atomic Energy Commission.

3. Properties (acquired lands essentially) for the use and care of Indians.
4. Properties used for conservation and development of water and power resources such as reclamation and flood control, river and harbor improvement, and perhaps electric power generation where this power generation is associated with other major purposes of the projects. Transmission facilities to serve project or other Federal purposes might be included also. The generation of power poses special problems. * * *
5. Perhaps certain extensive properties used for general experimental and research purposes. * * *[6]

827. Most proposals for taxation of Federal property apply only to real property. It is true also that most of the existing provisions of law apply only to real property, although there are a few that do apply to personal property (see pars. 318, 322). The Budget Bureau bill does not provide for taxation of personal property except with respect to some commercial and industrial property where tangible personal property is attached and has a fixed location. Specifically, this would include machinery, equipment, boilers, transmission lines, and the like—property which in some jurisdictions might be considered realty and in others personalty, even though it has a fixed location. Tangible personal property as thus defined does not include such movable items as vehicles, inventories, furniture, or supplies.

828. The bill introduced by Senator Knowland (S. 2473), applicable only in connection with defense-production facilities, includes all improvements to land, whether fixed or movable, machinery, raw materials, goods in process, inventories, products, supplies, and components. In other words, under this bill, goods in process (e. g., a partially completed tank or aircraft) to which the United States had title, would be subject to taxes; however, once the product was completed and delivered to the United States it would be exempt. The reasoning behind the provision for making payments on goods in process, etc., is that the Federal Government frequently takes title under its procurement contracts to partially completed goods. Ordinarily, the manufacturer would retain title to his product until completed; under such circumstances he would pay any applicable State or local taxes on such property. The proposed bill establishes substantial equity with respect to goods similarly situated, although the United States has taken title to them. Another bill (H. R. 5937) by Representative McDonough accomplishes much the same result except it actually makes the United States liable for State and local taxes on tangible personal property on which it holds the title, but which is in the possession, or under the control, of the person who manufactured or produced it, and with respect to which the full purchase price has not been paid.

2. BY DATE OF ACQUISITION AND LENGTH OF TIME HELD

(a) *Cutoff date*

831. There is a strong belief in some quarters that if any general legislation is adopted for payments in lieu of taxes, the payments should be limited to property acquired after a designated cutoff date. There is also the belief that with respect to some types of property the payments should be only of a transitional character which should terminate after the lapse of a designated number of years. Of course both these views conflict with the other popularly held belief

[6] National Education Association: Status and Fiscal Significance of Federal Lands in the 11 Western States, 1950, p. 166.

that payments should be made with respect to all Federal property irrespective of date of acquisition or the length of time held.

832. Those who advocate a cutoff date base their reasoning largely on (1) the need for reducing the cost to the Federal Government of making the required payments, or (2) the fact that in many of the cases adjustments will already have been made in the economy of the affected areas and any payments now will constitute an unwarranted windfall. The same reasoning applies to temporary payments which would be solely of a transitional nature within which time it is contemplated that the necessary adjustments will have been made. Those who advocate payments on all properties, irrespective of the date of acquisition or period held, base their view generally on the fact that any cutoff date would be so fixed as to deny payments on the overwhelming bulk of Federal property.

833. The proposed Bureau of the Budget bill contains several provisions of interest here and it provides a good starting point for the discussion. The original Bureau draft provides (sec. 101) for payments with respect to Federal properties (with exceptions)[7] serving a national interest but excludes therefrom properties acquired or constructed prior to January 1, 1946, unless taxes, payments in lieu of taxes, or shared revenues have been paid to the applicant government since that date. The Bureau explained its reasoning with respect to this provision as follows:

> * * * This cutoff date would permit payments in connection with those World War II properties still held by the Government which were previously the basis of Federal payments, but would provide no payments on many of the wartime acquisitions. The use of a cutoff date reflects a presumption that adjustments for the exempt status of older Federal properties have been made through the process of tax capitalization. To make payments on account of Federal properties acquired before some reasonably recent date would bestow windfalls on many present owners of taxable property who purchased their properties at prices which already reflected the local tax readjustments necessitated by Federal removal of other properties from the taxroll. Other cutoff dates considered during the drafting of the bill were September 8, 1939, the date of declaration of a national emergency prior to World War II, and July 1, 1950, approximately the beginning of the Korean campaign and the present mobilization effort. The payments are not to be retroactive; the date is employed only to identify properties on which future payments will be authorized. The same cutoff date is also applied in determining eligibility for transition payments under section 104. Allowing older Federal properties to be eligible for payments under section 101 if they have been subject to payments of some kind since the cutoff date recognizes that when property is withdrawn from uses for which revenue sharing is authorized, or when other Federal payments on account of the property are stopped, the effect upon the local government is much the same as if the property were removed from private taxable ownership.
>
> Property which has never been in private taxable ownership will not be eligible for payments under section 101 unless, since the cutoff date, there have been revenue-sharing payments or payments in lieu of taxes made upon it. An exception to this general provision is made when the applicant government has come into existence since the date of enactment of the bill. In such cases, the requirement that payments of some sort must formerly have been made is waived.[8]

834. As pointed out, objection to any cutoff date is based principally on the fact that most property held by the Federal Government will be excluded under any cutoff date likely to be adopted. Thus, one organization reported that the "most salient" of its objections to the Bureau of the Budget bill was:

> * * * the establishment of a cutoff date which serves to eliminate from the scope of the legislation any property acquired by the Federal Government prior

[7] See pars. 926-932.
[8] Executive Communication No. 722, Regarding Payments in Lieu of Taxes, Aug. 16, 1951, p. 8.

to such date. It is felt that if a cutoff date is contained in the legislation at all it should be no more recent than 1939 as it was in that year and in subsequent years that the local government units experienced the greatest impact of Federal acquisition of properties located within their boundaries.[9]

835. Similarly, another says:

The legislation should not provide that payments be made only with respect to properties acquired after a given date. September 8, 1939, is the date of declaration of a national emergency prior to World War II. Since September 8, 1939, the greatest acceleration of Federal property acquisition has occurred principally because of expansion of the Armed Forces, defense establishment, and related experimental areas. If a cutoff date is necessary, it should not be more recent than September 8, 1939. Any subsequent date would obviate payments for many of these war-necessitated acquisitions and would greatly retard adjustment of the inequities brought about by the war. More than that, additional inequities would be created by affording relief to only a few of the many localities entitled to it.[10]

836. It can also be reasoned that the cost to the Federal Government is not entitled to consideration as an argument in support of a cutoff date. The higher the cost is, the more acute it shows the problem to be and the more reason why a cutoff date should not be set.

837. The Knowland defense production facilities bill sets a cutoff date of July 1, 1950, which approximates the beginning of the Korean war and the subsequent expansion of the defense program.

(*b*) *Transition payments*

841. As a minimum of relief, transition payments are urged for property taken by the Federal Government when, as the result of the taking of an important piece of property or a large part of the value of a particular area, the local community suffers an immediate important loss of revenue. It is recognized that in some cases, increased valuations and developments of the surrounding areas will soon make up for the loss of the properties removed from the tax rolls. However, there is some shock every time the Federal Government takes a piece of property. Because of that, it has been argued, every time the Federal Government takes a piece of property off the tax rolls, it should continue for at least 2 or 3 years to pay the local government the equivalent of taxes theretofore collected from the property in order that the local government may have a chance to revamp its services and absorb the loss of revenues.[11]

842. Another study suggests transition payments for a limited time, and takes as an illustration the payment of full tax equivalents for 2 years, 80 percent for the next 2 years, 60 percent for the 5th and 6th years, 40 percent for 2 more years, and finally 20 percent for the 9th and 10th years, and nothing thereafter. Examples of some of the types of property which might be included are the sites together with the acquired improvements for (*a*) customhouses, quarantine stations, and immigration stations; (*b*) noncommercial radio stations; (*c*) prisons, reformatories, detention farms and homes; and (*d*) certain properties used for experimental, testing, or research purposes, such as pilot plants, experimental farms, testing stations, and laboratories. The study then proceeds to set out some problems with respect to

[9] National Institute of Municipal Law Officers: Report of Committee on Municipal Revenues from Federally Owned Property, 1953, p. 9. (Mimeographed.)
[10] National Institute of County Officials: Why . . ., p. 9.
[11] Emerson, William H. Hearings (unpublished) before the House Committee on Public Lands, on H. R. 1356, Mar. 2, 1949, p. 68.

category *"d."* Eventual complete exemption of Bureau of Mines properties is seen as quite logical, but continuous payments are seen as justifiable for some of the extensive properties of the Agricultural Research Administration.[12]

843. Still another proposal would provide for 10-year declining transition payments, but leaving at the end of 10 years a 50-percent basis for continued permanent payments.[13]

844. The law and practice already contain some examples of transitional payments. Perhaps most interesting of these is that provided for the Jackson Hole country in Grand Teton National Park. A statute adopted in 1950 requires a 10-year payment of full taxes with respect to certain lands and improvements acquired after March 15, 1943, and then for a sliding scale reduction for the succeeding 20 years.[14] This illustration is discussed at greater length above. (See par. 612.)

845. The Bureau of the Budget bill (sec. 104) recognized the importance of transition payments over a period of 10 years for certain properties for which permanent payments were not provided. The idea behind the payments is to give the State and local governments a definite period of time in which to adjust their finances to the removal of the property from the tax rolls or from uses which have theretofore made the property subject to revenue sharing or payments in lieu of taxes. However, transition payments will not be made on (1) properties used or held primarily for purposes for which property under private ownership would be exempt from taxation under the constitution or laws of the State of location, (2) properties used or held primarily for services to the local public, or (3) properties which have not been subject to taxes, payments in lieu of taxes, or shared-revenue payments since January 1, 1946. Among the properties which would qualify for the 10-year transition payments are those acquired for various land conservation programs (land utilization projects, national forests, national parks and monuments, fish and wildlife refuges) and other miscellaneous properties (prisons, hospitals, certain aids to air and water navigation, and properties used in police and regulatory activities).

846. The payments under the Bureau of the Budget bill would be made under a schedule based on the average taxes, payments in lieu of taxes, or shared revenues received by the applicant government on account of the property in the 2 years prior to the change in ownership or use which resulted in its eligibility for payments. Starting at the level of the previous average payment, the transition payments would decline every second year by one-fifth of that amount and cease 10 years after the change in ownership or use.

3. PROPERTY IN EXCESS OF A FIXED PERCENTAGE OF ALL ASSESSED PROPERTY

851. Stimulated by the action in Canada, some thought has been given in the United States to provide for payments to each local unit wherein is located Federal property in excess of the average of all Federal properties located in all local units. Thus in Canada,

[12] National Education Association: Status and Fiscal Significance of Federal Lands in the Eleven Western States, 1950, pp. 164–165.
[13] National Association of County Officials: Why . . ., p. 9.
[14] 16 U. S. C. 406d–3.

provision was made by the Municipal Grants Act [15] under which payments would be made to cities, towns, villages, and counties when the value of the Dominion property (with numerous important exceptions)[16] is more than 4 percent of the value of all taxable property within the area. It had previously been determined that Dominion properties constituted about 4 percent of the value of all taxable real properties in the municipalities affected. Payments are made on the excess at the rate of 75 percent of the municipal taxes that might have been levied.

852. There are certain objections inherent in a plan of this sort and there are certain further objections which would arise in its application to the United States. Among these are the following:

1. No provision is made for distinguishing between local and regional and national use of the property.

2. No provision is made for distinguishing whether the property is for general government or for commercial and industrial purposes.

3. The plan involves not only the assessment of all Federal property but also the determination of assessment ratios (i. e., determination of ratios of "assessed value" to "actual value").

4. The plan ignores the time when the properties were acquired and the fact that adjustments may have been made; "windfall' payments might thus well result.

5. It is at best a stopgap provision and will provide a peg for States and local governments to demand removal of the average-holdings exemption.

853. The point last mentioned is illustrated by the resolution adopted on September 21, 1953, by the Canadian Federation of Mayors and Municipalities. They asked for full in-lieu payments on the full assessment of Crown property.[17]

854. It may be said that to some extent the arguments offered against the plan are really the best arguments for it. It avoids the necessity of determining whether a particular piece of property is used for local, regional, or national purposes, and whether it is used for commercial and industrial purposes on the one hand versus general Government purposes on the other. Certainly in many cases in the United States, many properties served a combination of several purposes.

C. Types of Federal Payment Proposed

1. INTRODUCTION

861. There have been a great many proposals for remedying the difficulties that exist by reason of the exemption of Federal property from taxation. The suggestions range all the way from proposals for taxation of substantially all Federal property, or payments in lieu of taxes on all Federal property, to more moderate proposals for taxation or in-lieu payments for selected types of property, or just to correcting the situation in some particular locality. Some of the more general recommendations will be discussed in succeeding para-

[15] Statutes of Canada, 1951, ch. 54.

[16] Among the exceptions are properties in connection with conservation undertakings, cultural, historical, and recreational facilities, and improvements other than buildings designed for the shelter of people, plant, or movable property. Properties administered by Crown corporations, etc., such as the national railways, National Harbours Board, Canadian Broadcasting Corp., and others are also excluded, but provision is made for payments in lieu of taxes with respect to these properties on the basis of negotiated agreements.

[17] Toronto Globe and Mail, September 23, 1953, p. 10.

graphs, classified according to the type of payment for which they provide. The well-known Bureau of the Budget bill cuts across numerous lines so a brief discussion of it will be given here with more detailed discussion to follow.

862. Several Members of Congress have introduced bills closely resembling that proposed by the Bureau of the Budget in 1951. The Bureau of the Budget drafted its bill pursuant to a mandate of a conference conducted in April 1949 between officials of the Federal, State, and local governments, on the subject of intergovernmental fiscal relations. In the present Congress, bills modeled on the Bureau of the Budget proposal are S. 788, and H. R. 327, 2092, and 2103. The short title of the Budget Bureau proposal is "An act for payments to State and local governments on Federal real property."

863. The Bureau of the Budget bill would replace some 20 piecemeal provisions with a few basic types of payment subject to standards applying uniformly to all similar properties coming within the scope of the bill. It would authorize payments in many cases for which no provision now exists. The bill would authorize actual payments of State and local taxes on some types of property. (See pars. 902–904.) But in most cases, payments in lieu of taxes (rather than actual taxes) are authorized. (See pars. 926–932.) The bill would also authorize payments of special assessments for local improvements. (See par. 972.) In general, the bill would provide that no payments be made on properties acquired prior to January 1, 1946,[18] but excepting cases where the Federal Government has made payments since that date on earlier acquisitions or where special hardship exists. The bill reflects a general assumption that property-tax costs of property devoted to activities that are predominantly of national or broad regional interest should be borne largely by Federal taxpayers, whereas property-tax costs of activities that are chiefly of local interest and benefit might well be borne by local taxpayers. Existing revenue-sharing statutes are left undisturbed by the bill, and so are the provisions for payments in lieu of taxes on federally owned low-rent housing. A wide variety of properties such as public domain land, prisons, cemeteries, and property devoted to land-utilization projects remain tax-exempt. A special category of payments is authorized to cover exceptional cases in which local governments burdened by Federal activities are not able to obtain relief under the more general provisions of this proposal or from other sources. (See pars. 929–932.) The primary administrative responsibility under the bill is lodged in the agencies holding or using Federal property, but in order to promote a uniform interpretation and application of the governmentwide policy, a three-member commission is provided to issue rules and regulations. (See par. 983.)

864. The Bureau of the Budget bill is approved in principle by many of the Federal agencies and also by representatives of the associations of State and local government officials. Some objections have been raised to the bill as applied to particular types of property but most of these were discussed above in chapter IV. However, note will be made here of the contention of one organization to the effect that:

> The bill runs to some 35 pages * * *. It is complicated and technical and is very difficult to analyze with or without the actual bill in front of you. It is the

[18] In some of the bills, the cutoff date is left open to be determined later, but the original Budget Bureau bill set January 1, 1946, as the cutoff date. For a more extensive discussion of cutoff dates, see pars. 831–837.

opinion of most persons who have studied the bill that it is a mere unification and codification of previous legislation adopted by Congress with but a few possible benefits to municipalities.[19]

865. However, as one group remarks:

It is the unequivocal conviction of all organizations representing local units of government that one of the most constructive means of counteracting the accelerated rate of increase in Federal land ownership is passage of general legislation similar to the Bureau of the Budget bill, at the earliest possible date.[20]

866. A Federal agency anticipates problems with respect to payments in lieu of taxes on realty containing various types of installations, one of which might be subject to such payments, and another exempt from all payments. The agency commenting on this point observes that the Budget Bureau in its memorandum represents that a predominant usage test would be applied, but the bill itself is silent.[21]

2. CONSIDERATION OF BENEFITS PAID OR RECEIVED

871. Before discussing the various proposals for payments, attention will be directed to the question of whether in making such payments recognition should be given to the various other forms of Federal aid which are supplied, and to the increased business and employment which may result from the presence of a Federal installation. There is the further fact that in many cases State and local governments are not asked for and do not provide all of the services usually rendered to taxpaying property. Many of the Government agencies have expressed the belief that in the great majority of cases, the benefits derived by local units outweight any tax loss which they may suffer. Their contention is that the presence of a Federal plant means increased business and employment, larger payrolls, larger tax collections, etc. All these, they argue, should be weighed in determining the amount of Federal taxpayments. Other intangible benefits are cited.

872. It is pointed out, too, that under numerous programs, States and local units receive payments of Federal aid, share Federal revenues from various types of Federal land, etc. Opposition to these contentions is based largely on the thought that private industry adds many of the same benefits that Government industry does, but private industry cannot use such benefits as the basis for a demand that its tax bill be lowered. And as for Federal aid, the argument is that there is no relationship between Federal aid and Federal taxpayments with respect to Federal property.

873. Many of the laws providing for in-lieu payments at the present time provide for giving attention to such benefits. (See par. 318.) But most of the proposals currently being offered, including that by the Bureau of the Budget, and the Lane bill, ignore any such benefit.

874. The Army, in opposing legislation for payments in lieu of taxes, pointed out [22] that in 1942 it had investigated 43 military land acquisition projects, involving 326 local taxing units in 27 States. The investigation revealed that only about one-eighth of the taxing units

[19] National Institute of Municipal Law Officers: Report of Committee on Municipal Revenue from Federally Owned Property, in Municipalities and the Law in Action, 1952, p. 95.
[20] National Association of County Officials: Why . . . 1953, p. 3.
[21] Letters from the Veterans' Administration to the House Committee on Interior and Insular Affairs, October 25, 1951, and April 27, 1953.
[22] Letter from the Department of the Army to House Committee on Public Lands, June 6, 1949.

suffered loss of tax revenues without offsetting benefits. In 1949 the Department made additional investigations of approximately 100 projects involving land acquisition which, based on tentative conclusions arrived at in the course of the study, substantiated the earlier findings to the effect that taxing units suffered initial losses of tax revenues which were more than offset by numerous direct, indirect, and intangible benefits accruing thereto by virtue of Federal ownership. Although detailed study disclosed that the removal of lands from the existing tax structure of local communities resulted in hardship in some cases, the Department maintained the view that, insofar as lands under its jurisdiction were concerned, these hardship cases were so limited in number as not to justify the expense of establishment of a commission to work on the problem. The Department also argued with respect to military installations long maintained for defense purposes, it was pertinent to note that there has been no noteworthy expression of dissatisfaction by the communities regarding the tax-exempt status of these defense properties. Hence it seemed reasonable to conclude that with respect to these earlier establishments, the benefits which have been accruing to the communities have greatly offset any losses of tax revenue occasioned by Federal ownership.

875. An example of the need for giving consideration to indirect benefits is likewise to be found in the case of the Atomic Energy Commission. Commenting on the lack of a provision in the Bureau of the Budget bill for giving such recognition, the Atomic Energy Commission said:

> We note that the criteria for determining the amount of payments to be made under title I make no reference to indirect benefits received by the State or local governments in terms of larger payrolls and increased consumer expenditures attributable to Federal activities. The desirability of considering such indirect benefits is of particular interest to us since our principal installations have been established in relatively isolated areas and, we believe, have brought substantial benefits to some of the States or political subdivisions affected.[23]

876. The contention of those who would give recognition to the benefits derived from the existence of federally owned property is bolstered by the fact that many of the Federal projects are where they are because the States and local units deliberately solicited their location there in the belief that economic advantage would thereby accrue. There are also cases of States and local units which were so impressed with the advantage that would accrue to them by reason of the presence of federally owned property that they actually purchased lands and floated bond issues to finance and purchase, and then donated the lands to the Federal Government to establish a national park, an Army installation, etc.[24]

877. The foregoing idea is illustrated by the following excerpt from the remarks of the chief tax officer, Office of the Judge Advocate General of the Navy:

> It is amazing how short is the memory of man. It is not very long ago, at the advent of a terrific war, when there was a great need for manufacturing of various instruments, machinery, tools, ammunition, and many of you may recall how quickly everyone went to Washington to get some war contracts into his particular

[23] Letter from the Atomic Energy Commission to House Committee on Interior and Insular Affairs, September 7, 1951.

[24] Further problems with respect to such gifts arise when the Federal Government has ceased to use them for the purposes for which they were given, and is perhaps now actually leasing them or otherwise deriving revenue therefrom while they remain tax exempt. See for example H. R. 3362 of the 83d Cong. and H. R. 4243 of the 82d Cong.

State in order that his State might play a part in the war picture. Now, at the time all this business was being sought it was well recognized by both the spokesmen for the various State groups and the Federal Government that there would be many problems that would have to be met. Schools would have to be built; fire protection, police protection and sanitation services would have to be provided. We knew a thousand and one other municipal and State problems would arise in connection with the great increase in the population caused by the influx of people who would man the war plants. It was well known at that time that there was such a thing as immunity from State taxation by the Federal Government. It was known that it was impossible for the Government to pay real-estate taxes or other types of taxes on property which it owned. At the same time, thousands of people came into the various States, and revenues from the motor vehicle registration tax, and sales and use taxes, and personal property taxes went sky-high, because of the war conditions.[25]

878. Further illustration is found in the comments of Representative Redden of North Carolina. In 1949, he said:

I am for this bill, but I find that we are doing today just what might be expected. We are condemning the Federal Government for an act in which the people have played a great part in the Federal Government finding itself in. I will give you an example in my district in North Carolina when we undertook to establish the Great Smoky National Park.

Everybody in America was eager to have that park established. In one county the park took in about 60 percent of the total area of the county, including about 60 percent of the value of the real property that was subject to taxation. And everybody in that county favored that. They wanted the Government to have this land. They wanted the park established; it would be such a great asset to bring in tourists and people everywhere.

When the Federal Government got that land, they found out it took from them revenue that they had to have, and in order to get it, they had to go against the remaining 40 percent of the land.

That same thing in greater or smaller proportions can be said of almost every county in this country so the Federal Government is not responsible for that.

That is, when we referred to the Government in Washington. It is the people that have brought it upon us. People right today are coming before this committee to take off the tax books down there 2 million acres of land.

They say "We have bought it, we want to give it to you, to make a great Federal park down there."

When you do that the Federal Government is going to be condemned for taking that land in years to come and say, "Now pay us taxes in lieu on that land." [26]

879. There are numerous instances of Federal public works which, if the Federal Government did not undertake them, the State or local government would frequently have had to undertake the same project. Flood control and reclamation projects are examples. The Department of the Army in the last cited letter opposing an earlier version of the present Lanc bill as applied to various projects for the improvement of navigation and for flood control and allied purposes, including the construction of dams and reservoirs, levees, flood walls, channel dredging, etc., pointed out that such projects:

* * * are, for the most part, initiated in response to requests of local interests and are authorized by the Congress upon the basis of detailed reports and recommendations made by this Department. In appropriate cases, estimates are made of the amount of taxes on property that may be removed from the tax rolls, and these estimates are taken into consideration both by this Department and the Congress when weighing the public benefits and the total cost of the project. Thus, real property acquired for these civil works projects is held pursuant to Federal laws enacted in the public interest and, in a very real sense, in the particular interest of the citizens and communities in the locality of each project. The initiation of most civil works projects depends upon a substantial assurance of local cooperation by the State and political subdivisions concerned. Local de-

[25] Robert C. Burk, discussing the report of the Committee on Payments in Lieu of Taxes of the National Association of Tax Administrators, in Revenue Administration, 1946, p. 46.

[26] Hearings (unpublished) before the House Committee on Public Lands, on H. R. 1356, Mar. 2, 1949, pp. 17–19.

mand and the furnishing of these assurances to obtain many Federal activities necessitating the acquisition of real property is convincing evidence that communities do not consider loss of taxes important in comparison with concurrent benefits resulting from the projects. While there are a few instances where payment of the equivalent of local taxes may represent a reasonable contribution, more often such payment would be an unwarranted bounty to certain localities at the expense of the Federal taxpayer.[27]

880. It goes without saying that there is much opposition to this point of view. It is pointed out that there would be many difficulties in finding any basis for measuring indirect benefits. But a more basic objection is that:

* * * merely because the Federal Government brings some benefits to a local community is no reason why it should not pay full taxes or in lieu payments.

Private industry confers payroll and other benefits on the community, and it pays full taxes. * * * even in the case where the community is a 1-industry town and is entirely dependent on that 1 industry still that 1 industry pays taxes and it is its fair share of the cost of local government. * * * Also many of the direct benefits accruing from the Federal Government's operations in a city are not solely for the benefit of that city.[28]

881. It may be true too that those who have sought the installation or location of a Federal project are not always the same ones who have to find the money to finance the additional administration and enforcement costs. Thus while it may be the Chamber of Commerce which sought the location of a Federal activity within a political area, it is the elected city officials that have to raise the revenue to finance the local government.

882. Another report argues as follows:

* * * The objection—which is important—is to include as offsetting benefits to Federal ownership and use of real estate general Federal grants-in-aid or such factors as increased employment, larger payrolls, and larger collections from sales and income taxes. On the basis of the latter arguments, any businessman who opens up a new store or factory or mine should also be entitled to claim offsetting benefits against his tax bills. The indirect-benefit argument is valid as far as any unit of government, particularly a State, uses sales and personal income taxes to finance its services, but it breaks down with reference to property taxes and business taxes based on franchise values and corporate income.[29]

883. Another aspect of this whole question is suggested by the foregoing quotation. It may logically be argued that the State as a whole benefits taxwise by reason of the presence of the Federal property, even though the local unit where the property is located suffers a substantial net loss. The State may collect additional revenue in sales taxes and income taxes through increases in population, a general expansion of business activity, and a quickening of the industrial tempo of the area. From most of these the State as a whole benefits, while the local unit—the town, city, or school district—suffers because it has to furnish numerous services for which it receives no equivalent offsetting tax benefit. The answer then may be that the duty of making the local district financially whole should rest with the State rather than with the Federal Government.[30]

884. On this point, the Federal Real Estate Board in 1943 said:

Adjustments in local government organization and practices are not within the province of the Federal Government, and the Board makes no specific recommendations in this field. The Board wishes to call attention, however, to the oppor-

[27] Letter from the Department of the Army to the House Committee on Public Lands, June 6, 1949.
[28] Keesling, Francis V. Hearings (unpublished) before the House Committee on Public Lands, on H. R. 1356, March 2, 1949, pp. 42–43.
[29] National Education Association: Status and Fiscal Significance of Federal Lands in the Eleven Western States, 1950, p. 150.
[30] Cf. Guandolo, Joseph: Payments to Local Governments in Lieu of Taxes, pp. 59–60.

tunities and responsibilities which the States and local agencies have in this regard. In some instances the direct benefits from Federal projects to the State at large or to certain of its local districts may exceed the aggregate tax loss to all. In such cases it could reasonably be suggested that the benefiting State or district provide financial aid for those units in a community which suffer loss of tax revenue, thus obviating the necessity of a contribution from the Federal Government or supplementing a Federal payment insufficient to meet the local need. This method of offsetting the special local benefits and burdens of different local government units is not now generally available to the Federal Government, and obviously the States may be slow to accept it. In many instances the same objective could probably be served, with significant gains in the efficiency and economy of the local governments themselves, through combining taxing units affected by Federal acquisitions or through the entire elimination of certain outmoded political subdivisions. This is a subject for State and local action.[31]

885. Finally, it must be admitted that the stimulus for location of all Federal works and activities has not been generated locally. There are very many instances of localities bitterly fighting Federal acquisition of land and the location of particular facilities thereon. Suits have been brought by local officials to restrain such acquisition, attempts have been made to deny public services to exempt Federal property, and on occasion municipal boundaries have been redrawn to force Federal property outside a particular jurisdiction.[32]

887. Much of the thinking on benefits that accrue to a community by reason of the location of a tax-exempt industrial plant stems from the belief that it will bring additional people to the community and they will pay taxes. Seemingly this must be the thought at least of communities which (in another connection) build plants and offer them tax-free to industry. However, there is some thinking to the effect that this reasoning is fallacious because it is the taxes on industry rather than on individuals which keep local government going. The mayor of St. Paul in explaining this point of view said:

* * * But take St. Paul as an average community. The manufacturing business pays $10 in taxes for every $1 in services they receive.

On the other side of the ledger, the local housing unit, whether it is homestead or otherwise, pays less than $1 for every $4 in services it receives. So either you are going to produce greatly accelerated profits from these businesses, or on the other side of the ledger you are going to place an increased burden on the householder and on the other business of the community.[33]

888. If this reasoning be true, alleged indirect benefits flowing from tax-free industrial plants including Government installations, may be illusory.

889. The National Institute of Municipal Law Officers committee on revenue from federally owned property has set forth a formula for allowing credits against in-lieu payments. It proposed:

The Federal Government shall be entitled to deduct from the amount of tax-equivalent payment * * * the following items only:

(*a*) The amount of any cash payments made by the Federal Government to the municipality to compensate for loss of real-estate tax revenue.

(*b*) The value of any capital improvement constructed at Federal expenses to the extent only that such improvement (1) directly benefits the particular taxing unit; (2) is essentially adaptable to the needs and requirements of the local taxing unit considered separately from the Federal needs and requirements; (3) is available for immediate use without charge by the particular taxing unit; provided further, however, that no deduction shall exceed an amount which

[31] Federal Contributions to States and Local Governmental Units With Respect to Federally Owned Real Estate, 1943, p. 14.

[32] Federal, State, and Local Government Fiscal Relations, pp. 277-278. (Letter from the Acting Secretary of the Treasury, S. Doc. No. 69, 78th Cong., 1st sess.)

[33] Hearings before a special subcommittee of the House Committee on Government Operations, on H. R 5605, July 20, 1953, p. 28.

would represent a financially prudent investment by such local taxing unit for such improvement.[34]

890. Another question to be answered before adopting general legislation for payments to States with respect to Federal property is the recognition to be given Federal statutes already making provision for some payments, as well as other statutes which take Federal ownership of property into consideration in determining the amount of Federal aid that is granted. For example, special treatment is now accorded to the public domain States under the national highway and airport construction programs.[35] Thus though the general rule for Federal-aid highways is that the costs be shared on a 50–50 basis, the rule is varied in sparsely settled public-lands States in recognition of the Federal acreage. As a result, the percentage of cost of Federal-aid highway projects varies between 50 and 60 percent in 6 States, between 60 and 70 percent in 4 States, between 70 and 80 percent in 2 States, and over 80 percent in 1 state.[36] Additional note may also be taken of the fact that the Federal Government assumes the total cost of national-forest highways which are often largely coincident with the Federal aid and State highway systems.[37]

891. Expecially important in this connection is the temporary legislation adopted by Congress in 1951 (Public Laws 815 and 874) and extended and amended in 1953 giving aid in the construction, operation and maintenance of schools in areas affected by Federal activities.[38] The question may be raised as to whether both the school aid and the payments of taxes, or substitute payments, should be made because of Federal ownership of the property. The Bureau of the Budget bill (sec. 101 (a)) specifically provides that school districts benefiting under these special acts shall not receive benefits under the Budget Bureau bill.

892. In expressing itself on this subject in 1951, the Federal Security Agency suggested that this might be too strict a provision because:

* * * There may well be other governmental services besides education furnished by the State or locality with respect to the property and the payments under Public Law 874 may, therefore, be inadequate to cover all these services which would normally be provided for from taxes on the real property if not owned by the United States. Such a community would not be as well off as another which did not receive any funds under Public Law 874.[39]

893. The Federal Security Agency also expressed the thought that generally payments in lieu of taxes on Federal property should not become a substitute for payments of the character authorized under Public Law 874 (1951) which provided for financial assistance in the maintenance and operation of schools in areas affected by Federal activities. As the agency said:

* * * To do so would mean substituting the diverse Federal "owning agencies" for the Commissioner of Education in determining the extent to which Federal activities had placed a special burden on the school systems of the localities, in determining the current expenditures necessary to provide free public education in the applicant community or in comparable communities, and in making other determinations on educational matters. On all such matters we feel the Commissioner is more competent, by virtue of his responsibilities in the educational

[34] Municipalities and the Law in Action, 1945, p. 155.
[35] 23 U. S. C. 12, 49 U. S. C. 1109.
[36] Bureau of Public Roads Memorandum, January 29, 1954.
[37] Annual Report of the Bureau of Public Roads, 1952, p. 21.
[38] 20 U. S. C. 237–244, 271–280 as amended by the acts of August 8, 1953, Public Laws 246 and 248.
[39] Letter from the Federal Security Agency to the House Committee on Interior and Insular Affairs, December 27, 1951.

field, his experience in that field, and the relationships already established between the Office of Education and State and local educational agencies than other Federal officials and agencies to make the required determinations.[40]

894. Perhaps not so pertinent as the immediately foregoing examples, yet certainly not to be overlooked, are the many provisions of Federal aid now accorded to all the States and local units. For the fiscal year 1953, $2.8 billions in Federal aid (including the sharing of certain Federal revenue) were paid out to States and local units. It is true that some of these payments bear little or no relation to the ownership of Federal property. Nevertheless, as the Assistant Director of the Bureau of the Budget pointed out in July 1953:

* * * Our review of budget estimates and legislative proposals has made us acutely aware that the exemption from State and local taxes which is afforded to most Federal property and operations and to some contractors for the Federal Government has been used, often successfully, in support of other substantial claims for Federal payments.[41]

895. Others have maintained that there should be no relation between Federal aid and taxes or in-lieu payments with respect to Federal property holdings, especially Federal aid for unemployment compensation administration, the various public-health services, old-age assistance, aid to the blind, etc. The spokesman for one group said:

We feel that there is no relationship between this bill and so-called Federal aid, such as Federal aid for highways. We assume that if the Federal Government makes grants for highways and for other similar purposes, it is doing so only in furtherance of a Federal responsibility. Presumably, the Federal Government must have highways for military purposes, for postal service and in the interest of interstate commerce and if that be true, Federal grants for highway construction should continue after enactment of a bill of this character since such legislation would in no way diminish Federal responsibility to construct and maintain highways. The same is true, we believe, of flood control, airport construction, hospital construction, and the like.[42]

896. Speaking directly to this subject, the Federal Real Estate Board wrote in 1943 that:

* * * Federal aids to the States far exceed any reasonable estimate of obligations with respect to real estate ownership. These aids are justified, however, on grounds wholly apart from such ownership, and for the most part these reasons would be just as cogent if the Federal Government did not own an acre of land. Further, the distribution of these aids is based on considerations appropriate to the particular programs, and any relation between allocations to States or counties and obligations based on ownership of real estate within their boundaries would be in most cases wholly accidental.[43]

897. A related fact is that the value of presently owned private land in the public domain States is higher than it would be if all the public-domain land were converted to private ownership. It seems clear that if any substantial portion of these nationally owned lands were thrown on the market, there would be a decline in the acreage value of lands currently in private ownership. Therefore, the net gain in assessed values to the States by reason of eliminating Federal ownership might be slight and might be more than offset by the cost of supplying State and local services and improvements now provided by the Federal Government.

[40] The same.
[41] Letter from the Bureau of the Budget to the Joint Committee on Atomic Energy, Daily Congressional Record, July 28, 1953, p. 10408.
[42] Seegmiller, Keith L. Hearings (unpublished) before the House Committee on Public Lands, on H. R. 1356, March 2, 1949, pp. 28-29.
[43] Federal Contributions to States and Local Governmental Units With Respect to Federally Owned Real Estate, p. 10 (H. Doc. No. 216, 78th Cong. 1st sess).

3. TAXATION LIKE PRIVATE PROPERTY

901. The most direct approach to payments with respect to Federal property is to subject such property to assessment in the same way as private property. This is already done in a very limited sort of way at the present time for the properties of Federal banking and credit agencies. (See par. 322.) Bills are pending in the present Congress for extending this procedure to limited additional types of property or (with a few exceptions) to all Federal property. Examples of the latter type are H. R. 276 of Representative Golden of Kentucky which provides that all Federal real estate and improvements (except courthouses, hospitals, post offices, mints, penitentiaries, jails, cemeteries, etc.) shall be subject to taxation by the States, counties, municipalities, etc., to the same extent as if privately owned. Other bills for selected types of property include that by Mr. Angell (H. R. 206) providing for State and local taxation of property acquired after December 7, 1941, for general military purposes, that by Mr. Rogers of Florida (H. R. 2572) providing for State and local taxation of property acquired since January 1939, for general military purposes, housing projects, national parks and monuments, and that by Mr. Hillelson (H. R. 5605 as reported) providing for continued taxation (or in-lieu payments) on taxable real property which has been on the local tax rolls but has been transferred to a tax-exempt Government agency.

902. In addition to the foregoing bills, note should also be taken of the Bureau of the Budget bill which provides for direct taxation of three types of properties: (1) Properties acquired by the Federal Government to protect its financial interest in connection with loans or contracts of insurance or guaranty (sec. 201); (2) property which is leased or sold by conditional sale to taxable persons and is not otherwise subject to State or local taxation (sec. 202); and (3) property subject to taxation under laws superseded by this bill with respect to which the owning agency decides (with the approval of the special commission which the bill creates) that taxes should continue to be paid (sec. 101 (c)).[44]

903. The Bureau of the Budget bill constitutes both a narrowing and an extension of the present consent to State and local taxation. It is narrowing in the sense that for some properties—for example, property of the Reconstruction Finance Corporation—equivalent administrative payments instead of direct taxes would be paid unless the agency and the commission agreed to continued payment of taxes on the property. The bill would, however, for the classes of properties subject to taxation, include tangible personal property with a fixed location, and this would in some instances constitute an extension of the present consent.

904. Foreclosed properties acquired by a Federal agency will under the Budget Bureau bill, continue taxable pending disposition, but once the property is converted to other permanent Government use, it will be reclassified and become subject to payments in lieu, or become tax-exempt, according to its permanent use. It is interesting to note that a bill currently pending in Congress (H. R. 5605 by Mr. Hillelson) provides for the directly opposite treatment of that pro-

[44] With variations, especially in the third category, the Knowland bill (S. 2473) provides for direct assessments with reference to defense production facility property.

posed under the Bureau of the Budget bill. It provides that whenever real property having a taxable status is transferred from one Government corporation to another Government agency, the property shall remain subject to local taxation (or in-lieu payments) regardless of its transfer.

905. The argument made for direct assessment of Federal property rather than in-lieu payments or some other arrangement is that it is the most practical, fair, and administratively inexpensive. Compliplicated formulas and exceptions which would prevail under other alternative methods would, it is argued, require costly administration and inject the possibility of unjust discrimination as among municipalities. It is also contended that direct assessment relieves from the necessity of determining so-called indirect benefits which it is so difficult to measure. And when benefits have to be considered, it would mean that every payment may be the subject of negotiation. In the words of the mayor of St. Paul:

* * * when you negotiate with the Federal Government they hold the whip hand, and bureaucracy in its ugliest form becomes a nasty word in our local vocabulary, because we find they just won't pay.

* * * * * * *

In other words, if you have to rely on in-lieu-of-taxes payments and that is to be subject to negotiation, * * * then we find ourselves in the position of coming to Washington on our hands and knees.[45]

906. This reasoning led a representative of the American Municipal Association to urge that the Federal Government should pay the same amount of taxes on all its real property in municipalities as private owners would pay on the same or comparable property without deduction because of any indirect benefits conferred by the Federal Government.[46] Committees of the National Association of Tax Administrators [47] and the National Association of Municipal Law Officers [48] have also urged an extension of the principle of direct taxation wherever possible and practical; only when such taxation is impossible or inpractical should resort be had to tax-equivalent payments or payments in lieu of taxes. The National Association of Tax Administrators' proposal would include within this class of property: power, flood control, public housing, rural resettlement and slum-clearance projects, national forests, real estate held by the Reconstruction Finance Corporation and its subsidiaries (which since the recommendation have been dissolved).

907. The basic argument against direct assessments of Federal property is that this method allows no possibility of recognition for benefits conferred by reason of the Federal ownership or activity, or other payments made by the Federal Government. This has been discussed at length above (see pars. 871–897). In the language of a study prepared for the National Education Association,

The cost of this plan would be unnecessarily high and would result in some very unhealthy fiscal situations in many localities.[49]

[45] Daubney, John E. Hearings before a special subcommittee of the House Committee on Government Operations, on H. R. 5605, July 20, 1953, p. 24.
[46] Keesling, Francis V. Hearings (unpublished) before the House Committee on Public Lands, on H. R. 1356, Mar. 2, 1949, pp. 38-39.
[47] National Association of Tax Administrators: Revenue Administration, 1946, p. 43.
[48] Municipalities and the Law in Action, 1945, p. 154.
[49] National Education Association: Status and Fiscal Significance of Federal Lands in the Eleven Western States. 1950, p. 147.

908. In 1943, the Federal Real Estate Board recited numerous arguments against allowing full State and local taxation of all Federal real estate. Summarized briefly these are:

1. Special services given locally by the Federal Government in connection with Federal ownership, such as fire protection, construction and maintenance of streets and highways, and watershed protection, in many cases offset any loss in State and local taxes. While there are some instances where payment of the equivalent of local taxes may represent a reasonable contribution, more often such payment would be an unwarranted bounty to favored localities at the expense of the Federal taxpayer.

2. The services of State and local governments required on behalf of Federal real estate, on the other hand, vary greatly. Wide differences in need for the services of State and local governments resulting from differences in the nature and use of Federal property could not be given proper weight under a uniform rule requiring payment of the equivalent of local taxes.

3. The submission of any large class of Federal real estate to local taxation would involve grave administrative difficulties. The multiplicity of taxing jurisdictions and the wide variation in tax laws and practices would necessitate high administrative costs and would invite a host of minor but troublesome and expensive situations.[50]

909. An interesting sidelight on this whole problem is the fact that the lack of power of the States and municipalities to tax Federal property stems not only from the constitutional immunity laid down by the Federal courts, but also from the fact that under the constitutions and laws of numerous States, the power is also denied.

910. According to a study [51] released in January 1950, 22 States then had constitutional or statutory provisions exempting all Federal property from State and local taxation. In these 22 States, the State and local governments may be precluded from taxing Federal real property even though Congress consented to its being taxed. The study observed however, that within a period of 5 years (i. e. between January 1945 and January 1950), 17 States repealed statutory provisions or amended their constitutions to remove provisions which granted blanket exemption to all Federal property.

911. There is a possibility, however, that in spite of restraining State constitutional and statutory restrictions on State and local taxation of Federal property, some of the affected States and local units may still have the power to tax if the Federal Government consents thereto. This will be the case if the decision of the Supreme Court of the State of Washington [52] is followed. This decision upheld the validity of a county tax on real property leased to Boeing Aircraft Co. by a subsidiary of the Reconstruction Finance Corporation. A Federal statute authorized the taxation of the real property of the corporation and the court ruled that notwithstanding the State constitutional provisions declaring Federal property exempt, this did not bind the State to exempt Federal property when the United States had in fact granted its consent to taxation. The court how-

[50] Federal Contributions to States and Local Governmental Units with Respect to Federally Owned Real Estate, 1943. pp. 11-12.

[51] Federation of Tax Administrators: Taxation of Publicly Owned Real Estate, pp. 1-2 (Research Rept. No. 28). There have been changes since this report was issued, but in general the situation remains as stated.

[52] *Boeing Aircraft Co.* v. *Reconstruction Finance Corp.* (171 P. (2d) 835), appeal dismissed and cert. denied, 330 U. S. 803 (1946).

ever, drew on provisions of the enabling act which admitted Washington into the Union, for aid in coming to the conclusion it reached.

912. In opposition to Federal consent to State and local taxation of Federal property, it is pointed out that in nearly all the States it has been found advisable to refrain from subjecting State and local property to taxation. Thus, as of January 1950, State-owned property was exempted from local property taxation in 38 States. Only 10 States permitted local taxation of a usually very selective type of State property. Sixteen States (including most of the foregoing ten) made provision for payments in lieu of taxes to local governments, but usually only on a very selective type of property. The question then is that if the States have no obligation to compensate municipalities on account of State property owned within their limits, why should there be any greater obligation imposed on the Federal Government to compensate either with respect to its property.

4. PAYMENTS IN LIEU OF TAXES

(a) *Introduction*

916. Second best in the eyes of those who seek direct Federal payments of taxes in the same way as on private property, are proposals for Federal payments in lieu of taxes giving attention (but the less attention the better) to benefits flowing from the Federal ownership of property or other payments which the Federal Government may be making because of, or irrespective of, the ownership of such property. (See pars. 871–897.)

917. Payments to States and local units of sums based in part on property valuations (although not direct tax assessments) are provided in numerous enactments. (See pars. 316–318.) Major use of this device is on housing properties of the Housing and Home Finance Agency, but other examples are the Atomic Energy Commission property, certain Department of Agriculture lands, as well as lands of the Department of the Interior.

918. Payments in lieu of tax are usually determined first by ascertaining what the tax-equivalent would be if the property were in private ownership, and then (in some cases) reducing this sum by determining the value of benefits conferred with respect thereto on the State or local government. Sometimes a further reduction is made because of nonuser (or nonavailability) of the usual local services. In some cases, the payments are made only with respect to the land, exclusive of improvements, while in others improvements and personal property as well are considered. (See pars. 316–318.)

919. It was pointed out above that payments in lieu are considered second to direct assessments in the order of preference on the part of local tax officials. An explanation of this is that payments in lieu will often involve negotiation, and

> * * * when you negotiate with the Federal Government they hold the whip hand, and bureaucracy in its ugliest form becomes a very nasty word in our local vocabulary, because we find they just won't pay.
>
> * * * * * * *
>
> In other words, if you have to rely on in lieu of taxes payments and that is to be subject to negotiation * * * then we find ourselves in the position of coming to Washington on our hands and knees.[83]

[83] Daubney, John E. Hearings before a special subcommittee of the House Committee on Government Operations, on H. R. 5605, July 20, 1953, p. 24.

920. Nevertheless, one organization concedes that:

* * * in most cases they [i. e., Federal payments] should be not in the form of taxes but, rather, flat payments determined to a considerable extent by factors used in determining property taxes.[54]

921. In answer at least in part to the complaint of local officials with respect to negotiation is that in some cases they are not entirely adverse to taking from the Federal Government whatever they can exact, and it is the duty of Federal officials to protect the taxpayers of all the United States. It would seem that in the great majority of cases, a reasonable attitude could be expected from Federal officials who have nothing personally to gain or lose by reason of whatever sums they should determine after negotiation to be just Federal payments. And it may well be that whatever bureaucracy local officials must buck in the Federal departments has grown at least in part as the result of a necessary defense to exaggerated claims originating among the local officials.

922. General principles for in-lieu payments have been suggested in a report of the committee on revenue from federally-owned property of the National Institute of Municipal Law Officers. More than 8 years ago, the committee urged:

Where provision is not made by Federal law for local taxation of federally owned real property * * *, then the following principles and procedures should control by Federal law, for compensating localities for loss of real-estate-tax revenues.

Cities, counties, towns, villages, school districts, and civil and political subdivisions or taxing units shall be entitled to annual tax equivalent payments as hereinafter provided.

The Federal Government shall be entitled to deduct from the amount of the tax equivalent payment determined in accordance with the foregoing principles the following items only:

(*a*) The amount of any cash payments by the Federal Government to the municipality to compensate for loss of real-estate-tax revenue.

(*b*) The value of any capital improvement constructed at Federal expenses to the extent only that such improvement:

(1) Directly benefits the particular taxing unit; (2) is essentially adaptable to the needs and requirements of the local taxing unit considered separately from the Federal needs and requirements; (3) is available for immediate use without charge by the particular taxing unit; provided further, however, that no deduction shall exceed an amount which would represent a financially prudent investment by such local taxing unit for such improvement.[55]

923. A great many proposals have been made and bills introduced into Congress seeking in general or special ways to accomplish all or part of the objectives set forth above. There will be discussed below in some detail several of these bills (including the Budget Bureau bill, the Lane bill, the Knowland defense facilities production bill), with brief reference to others.

(*b*) *Bureau of the Budget bill*

926. The Bureau of the Budget bill, as pointed out, does not adopt any one formula and attempt to make it applicable to all types of property. For some property, it would continue the legal exemption, but would at the same time authorize in-lieu payments with respect to such exempt property. The bill divides these properties into three classes, and handles each type differently. The three classes are: (*a*) an inclusive group of properties serving national or broad regional interests, (*b*) resettlement and certain defense-housing projects, and

[54] National Association of County Officials: Why . . . 1953, p. 8.
[55] Municipalities and the Law in Action, 1945, p. 155.

(c) numerous other properties for which payments will be made for only a limited number of years.

927. With respect to the first of these (i. e., properties serving primarily national or broad regional interests) the Budget Bureau bill provides for payments on taxpaying properties acquired after the cutoff date of January 1, 1946. (See pars. 831–837.) The payments (sec. 101) would be based primarily on an estimate of taxes, with adjustments for special services required or furnished by the Federal Government in connection with the properties. No payments would be made in the event of discrimination against Federal property or the residents on Federal property in the way in which the local government provides the usual governmental sources. Generally, the estimate of taxes will be based on the value of the properties exclusive of improvements made, or personal property added, by the Federal Government after acquisition of the property. For commercial and industrial properties (see pars. 441–453), however, the value of Federal improvements and tangible personal property will also be considered. Taxes paid during the last 2 years of private ownership and losses resulting from cessation of revenue sharing or payments in lieu of taxes in particular Federal properties will be given consideration. An antiwindfall provision in section 101 (b) (4, 7) will prevent the payment of unreasonably large sums to local governments in areas which may be sparsely settled and have very little need for governmental services. In any particular case, payment of taxes upon properties subject to taxation under existing statutes may be continued in place of these administratively determined payments, if it is decided that the policy of the act will be better served thereby.

928. With respect to the second and third classes (i. e., resettlement and certain defense-housing projects (see pars. 516–542), and numerous other properties for which payments will be made only for a limited number of years (see pars. 841–846)), no further comment is necessary except to point out that payments for resettlement and the defense-housing projects will be full equivalent tax payments, less offsets for services supplied by the Federal Government.

929. The Budget Bureau bill (title IV) also undertakes to provide supplementary relief by giving authority for payments to local governments not otherwise compensated for substantial financial burdens arising in connection with Federal real property or activities. These payments may relate to Federal property, to persons living on Federal property, or to persons employed on Federal property. Thus there may be a case of intensified use of Federal property acquired before the cutoff date with respect to which no payments would therefor be made, or there may be a case of heavily increased employment on Federal property whose employees actually reside in a neighboring community where the increasing population may not be accompanied by a corresponding increase in tax revenue. Or there may even be cases where payments would actually be made under the act but they are inadequate to discharge what is deemed to be the true Federal responsibility. In none of the foregoing cases will supplemental Federal payments be made unless the applicant government is making a reasonable tax effort and avails itself of all other financial assistance to which it may be entitled. As one commentator has said, "The extent to which title IV will fulfill its purposes will depend largely upon how it is administered."

930. Several questionmarks have been raised against the provisions of title IV in providing supplementary relief in hardship cases. One Federal agency felt that the title would subject the commission established in title V (see par. 983) to continued pressures to issue, and thereafter progressively to broaden, regulations providing for additional payments. The end result "might well be to eliminate the very limitations specifically included in earlier sections of the bill;" clearer standards should be established for applying the provisions than are provided by the bill as it now stands.[56] On the other hand, looking at this title from the standpoint of the municipalities that would benefit under it:

> The provision for payments for special burdens imposed upon local governments might possibly extend substantial relief to municipalities, but it has so many limitations and restrictions surrounding it that it is very doubtful if any substantial benefit would be received by local governments bearing these burdens.[57]

931. One organization of local officials protests the inclusion of requirements of "reasonable tax efforts" on the part of local governments before payments can be made. It said: "Such requirements interfere unreasonably with local home rule." [58]

932. The Veterans' Administration has expressed doubt that the provisions should be included in any law. It said:

> The conditions under which this system would be established are considered vague and indefinite. Further, the title would require that in ascertaining eligibility for payments individual Federal agencies would determine, among other things, that the applicant local government is making a reasonable tax effort and is exercising due diligence in availing itself of Federal, State, and other financial assistance, but is unable to secure sufficient funds to meet the additional expenditures involved. Aside from administrative difficulties implicit in such determinations, the propriety thereof, involving matters of local concern, by an agency of the Federal Government is doubtful. The proposal * * * is considered far reaching and its adoption at this time is questioned. The Bureau of the Budget explanation of the title points out that whether this additional system of payments will be required can be determined only on the basis of actual experience under other provisions of the proposal. It is our feeling that the broad authority contemplated by title IV—almost legislative in character—should be withheld pending a showing of the need therefor rather than in anticipation thereof.[59]

(c) *Lane bill*

936. Over a period of several years there has been introduced in Congress a type of bill which is currently sponsored by Representative Lane of Massachusetts. In the 83d Congress, the bill is H. R. 508.[60] A similar bill was previously sponsored by Representative Engle of California (see for example 81st Congress, H. R. 1356). This bill would create a Commission on Federal Reimbursement to States and Local Governments. The Commission would pay States and local governments amounts in lieu of taxes on all Federal real property, with certain exceptions.[61] In determining the amount of payments to

[56] Letter from the Tennessee Valley Authority to the House Committee on Interior and Insular Affairs, September 6, 1951.
[57] National Institute of Municipal Law Officers: Report of Committee on Municipal Revenues from Federally-Owned Property, *in* Municipalities and the Law in Action, 1952, p. 95.
[58] National Association of County Officials: Why . . ., 1953, p. 10.
[59] Letter from the Veterans' Administration to the House Committee on Interior and Insular Affairs, October 25, 1951.
[60] The bill is patterned on the draft of a bill prepared by the National Association of County Officials which (according to one of its spokesmen) attempted to give practical effect to the recommendations of the Federal Real Estate Board made in 1943, although the bill does not deal separately with each of the eight categories described by the Board. (See testimony of Keith L. Seegmiller in unpublished hearings before the House Committee on Public Lands, on H. R. 1356, June 21, 1949, pp. 5–6.)
[61] The property excepted includes Federal office buildings, courthouses, customhouses, mints, assay offices, bullion depositories, post offices, research laboratories, experimental grounds, testing stations, quarantine stations, narcotic farms, immigration stations, jails, reformatories, detention farms, hospitals, and cemeteries.

be made, the Commission would be guided by the actual tax loss sustained by the State or local government as a result of Federal acquisition or ownership, and any direct monetary benefits derived by the State or local government as a result of such ownership.

937. This bill apparently attempts to provide one single answer to the problem of all types of Federal holdings of property. It is generally believed that there can be no one answer. In the language of the Federal Real Estate Board:

> * * * however alluring the thought may be, the search for a theoretically perfect and universal single solution [to the contributions problem] for all Federal real estate is futile. * * * The Board, as a result of its investigations, finds that the Federal Government now owns a strikingly wide variety of lands. Ranging from small post-office sites, through large war industry plants, to the great national parks and forests of the West, these holdings are used for many purposes and in countless different ways. * * * The whole picture is one of contrast and complexity.[62]

938. None of the Federal agencies seems to have any general good words to say for the proposal. The Department of the Interior has spelled out its principal objection to the bill because it provides for including the public domain within the type of property for which in-lieu payments would be made. In 1949 the Department said:

> The provisions for payments in lieu of taxes in H. R. 1356 cover public domain lands as well as acquired lands. The Department of the Interior consistently has opposed the imposition of ad valorem taxes, or their equivalent, on lands remaining in, or withdrawn from, the original public domain of the United States. This opposition has been based on the facts that, with minor exceptions, public domain lands never have formed a part of the tax base of any local government, that local governments have not been built up on the basis of tax revenues from such lands, that throughout the greater portion of these lands the occupancy is sparse and the use is light, and that the need for local public services created by the lands is nonexistent, or these services are provided, at least in part, by the Federal Government.
>
> These arguments against payments in lieu of taxes on public domain lands are valid, I believe; therefore I should prefer that public domain lands be exempted from the provisions of any bill providing for ad valorem payments in lieu of taxes on Federal lands. I appreciate the difficulty experienced by counties containing a large proportion of public domain in financing governmental services, however, and I note that the Department of Agriculture apparently has agreed to ad valorem payment in lieu of taxes, not to exceed three-fourths of 1 percent, on the appraised value of lands in national forests, including public domain lands.
>
> If ad valorem payments in lieu of taxes on public domain lands are to be made to States and local governments, lands such as those in grazing districts, that are permitted to private users for commercial purposes at rates which, on account of pressure of users and their representatives, are held to considerably less than are paid for use of comparable privately owned lands, should be appraised on the basis of the existing Federal income from such lands, rather than of the income which private owners might receive from them. I should like to reiterate, furthermore, that many of the public lands have no economic use and therefore should not be subjected to payments in lieu of taxes under any circumstances, and that the bulk of the unreserved, unappropriated public domain lands have such low productivity that they should be appraised at low values, in most instances lower than the traditional minimum price of $1.25 an acre.[63]

939. In commenting on the bill, the Department of Agriculture observed that—

> * * * Payments at rates substantially equivalent to those contemplated in the bill are already being made on certain classes of real estate under the jurisdiction

[62] Federal Contributions to States and Local Governmental Units With Respect to Federally Owned Real Estate, p. 4 (Message from the President of the United States, H. Doc. No. 216, 78th Cong., 1st sess).
[63] Letter from the Department of the Interior to the House Committee on Public Lands, May 26, 1949.

of this Department. It therefore seems unnecessary and unwise to disturb satisfactory arrangements for contributions.[64]

940. In spite of the immediately preceding comment, it is to be noted that the bill makes no reference to the continuance or the repeal of any of the numerous provisions of existing law. It may be the thought of the authors that payments will be made under existing law and also under this bill, in effect providing for whichever payment is the greater.

941. Complexities in the administration of the proposal appear to be numerous. As applied only to national forests, it is estimated that 50,000 local governments would be concerned. The difficulties incident to this situation as well as numerous other complications are set forth at length in the separate discussion of national forests, pars. 586–605.

(d) Defense production facilities bill

946. Late in the first session of the 83d Congress, a bill (S. 2473) was introduced by Senator Knowland for himself, Senator Taft, and others. The bill provides for payments to the States and local taxing units adversely affected by Federal acquisition, ownership or use of defense production facilities. This bill, like the previously discussed Budget Bureau bill (see pars. 926–932) reflects the general assumption that, since defense production facilities are of national, rather than local interest and benefit, the property-tax costs associated with such properties should be borne largely by Federal taxpayers rather than local taxpayers.

947. Ordinary ad valorem tax payments would be made in a very limited type of case such as foreclosed property, property leased or sold under conditional sale, and certain properties which have been subject to taxation since June 30, 1950, e. g. Reconstruction Finance Corporation property. But more important for the discussion here are the administratively determined payments related to the ad valorem taxes that might be applicable under private ownership.

948. The in-lieu payments are proposed for defense production facilities which meet two conditions: (1) The title is in the Federal Government, or the property, by reason of its use by the Federal Government, is not subject to taxes of general application levied by the local taxing units, and (2) the property is acquired, owned, or used for industrial or commercial purposes connected with national defense. A further important point is that "property" as proposed to be used in the bill includes not only real property but also machinery, inventories, raw material, goods in process, products, and components. (See pars. 827–828.) There are two types of defense-production facilities which are excluded from the operation of the in-lieu payments, namely, defense-production facilities acquired or constructed by the Federal Government prior to July 1, 1950,[65] and defense-production facilities, which, if in private ownership, would be tax-exempt under the constitution or laws of the State of location. The July 1, 1950, cutoff date is used to approximate the beginning of the Korean action and the subsequent expansion of the defense program. Also excluded from the bill are property owned or used by the Atomic Energy Commission and materials acquired, owned, or used by the Federal Government for strategic and critical stockpile.

[64] Letter from Department of Agriculture to the House Committee on Interior and Insular Affairs, May 31, 1949.

[65] For discussion of cutoff dates, see pars. 831–837.

949. The amount of each in-lieu payment will be determined by the Federal owning agency in accordance with general rules and regulations to be issued under the bill. The payments will be based on certain factors laid down therein, although it is pointed out that these factors do not in themselves provide a formula, but are intended to represent the considerations upon which the amount of the payment will be based. The considerations have been summarized by the Bureau of the Budget as follows:

(1) Taxes charged against the property for the last 2 years during which it was in taxable ownership. In the case of property which has been in Federal ownership for more than 5 years, this factor may be omitted to avoid the difficulty of searching old tax records to ascertain the amount of taxes charged.

(2) The amount of tax which would currently be payable on account of the property, if it were taxable. Improvements to real property made by the Federal Government after its acquisition are omitted from this calculation; they are considered in the third factor. This "current tax equivalent" is to be determined by applying the average local "effective tax rate" to a current fair valuation estimated by the Federal owning agency; the "effective" rate is used to adjust for differences between the assessed and fair values of taxable properties generally in any taxing jurisdiction. To simplify administration, this determination is not required oftener than once in 5 years.

(3) The amount of tax which would currently be payable on the value of improvements to real estate made by the Federal Government after acquisition of the real estate. Where improvements made on or after July 1, 1950, are in the nature of partial or total replacements of improvements made by the Federal Government prior to that date, only the net increment of improvements is to be considered. This "current tax equivalent" is to be determined by applying the average local "effective tax rate" for real estate to the value of the Federal improvements. The 5-year interval between redeterminations is omitted, however, since improvements may be added from year to year.

(4) The extent, if any, to which the property is in the control or custody or is used by a private operator, contractor, agent, or person. In some instances, the operating arrangements for defense-production facilities may make it tantamount to private property, with only the legal title in the Federal Government. This fact may have a bearing on the amount of payment to be made.

(5) Additional expenditures which may be required of the applicant State or local government for providing services to the defense-production facility, and its workers or residents and their families.

(6) Two types of aid which may be rendered by the Federal Government. The first is the value of any local-type services provided by the Federal Government as an incident to its activities. This value is to be measured by the cost to the State or local government of rendering like services. The second type of aid is any provision of financial assistance which may be given for constructing or operating local schools or defense-community facilities and services, as provided in certain other Federal laws. Either type of aid may warrant a credit against the payment otherwise computed.

(7) Any other facts relevant to a fair determination.[66]

950. Interest in this bill stems largely from the initiative of Senator Taft in trying to find an answer to the difficult situation confronting Cuyahoga Heights, Cleveland, Ohio, and other similarly situated areas. The situation in Cuyahoga Heights has been set forth above in paragraph 221.

951. The authors of this bill have tried to separate out of all Federal property one particular type which is causing particular present hardship. So far as published statements on the bill are concerned there is very little as of the present writing. The Defense Department requested additional time to study the effect on it of

[66] Hearings before the Senate Committee on Government Operations, on S. 2473, July 29, 1953, pp. 8-9.

the bill. Statements of witnesses for local governments have favored it. As one of them said:

> The American Municipal Association supports the principles embodied in S. 2473, and we urge your immediate, favorable consideration of this bill so as to insure its enactment into law by the present session of the 83d Congress. In our opinion, it will do more than any other single thing which the Congress has done in many years to right some of the grievous wrongs which have arisen as a result of the exemption from local taxation of Federal, industrial, and proprietary property. * * * S. 2473 represents positive action in the attempted solution to one of the local government's gravest problems.[67]

(e) Other bills and proposals

956. An earlier discussion referred to a study which proposed Federal payments on certain properties serving national or broad regional interests. It proposed annual payments based upon considerations set forth below. Payments would be made on properties which before Federal acquisition were privately owned and taxable or were, before their present Federal use, in a category of federally owned property subject to payments in lieu of taxes or any revenue-sharing arrangement. Improvements made subsequent to such acquisition or use would be excluded in making calculations. It will be noted that these considerations as set forth below, closely resemble these incorporated in the Budget Bureau bill. The considerations suggested are:

1. The average amount of taxes levied against the property, including acquired improvements and permanently attached personal property, during the last 2 years of private, taxable ownership.
2. Adjustment of the tax loss periodically (say, every 5 years) to current tax rates and assessed valuations.
3. The average amount of the last two annual payments in lieu of taxes or payments under any revenue-sharing arrangement.
4. The additional costs, if any, imposed on State or local governments because of service needs resulting from the ownership or use of the property by the Federal Government.
5. As a credit to any payments determined by these criteria, the provision by the Federal Government of any services ordinarily provided by the State or local government as measured by the unit cost to the relevant State or local government for rendering like services.
6. Any other relevant factors such as bonded indebtedness outstanding, which is a lien against real estate, at the time the property is acquired by the Federal Government.[68]

957. A number of bills in the present Congress also make provision for in lieu payments. No comment will be made on these other than to present a brief summary of each.[69]

H. R. 281. Mr. Goodwin; January 3, 1953 (Armed Services)

Makes subject to payments in lieu of State and local taxation any property transferred to a military or naval service department, beginning January 1, 1949 [amending 61 Stat. 774].

H. R. 368. Mr. Auchincloss; January 3, 1953 (Interior and Insular Affairs)

Provides for payment to the States and political subdivisions of a sum equal to the probable tax revenues which would have been received from lands principally used since December 7, 1941, for recreation for the armed services, had they been under private ownership.

[67] Hearing before the Senate Committee on Government Operations, on S. 2473, July 29, 1943, p. 24.
[68] National Education Association: Status and Fiscal Significance of Federal Lands in the Eleven Western States, 1950, p. 166.
[69] The summaries are taken from the Digest of General Public Bills, 83d Cong., 1st sess., published by the Library of Congress.

H. R. 466. Mr. Keating; January 3, 1953 (Interior and Insular Affairs)

Provides for payments in lieu of taxes by the United States and Federal agencies to States and local taxing units. Payments shall equal the amount of the taxes which would be levied on the property were it privately owned, reduced by the value of any particular local services not received by such property. Property acquired by the United States or a Federal agency for production, manufacturing, storage, warehouses, dockage, or wharfage purposes, shall be conclusively presumed to receive full local services. In addition, the United States shall make payments in lieu of school taxes to local taxing authorities in which Federal property not subject to taxation under the above provision is situated, if Federal officers, employees, etc., reside thereon, the amount to equal the fair tuition charge of pupils residing on the property and attending public schools maintained by the local taxing authority.

H. R. 552. Mr. Philbin; January 3, 1953 (Interior and Insular Affairs)

Directs the Secretary of the Treasury to annually reimburse the town of Lancaster, Mass., for the loss of taxes on property acquired by the United States, in such town for the expansion of Fort Devens, such loss to be paid for the years after July 1, 1939, based on the amount of taxes charged on the property for the year of 1940.

H. R. 597. Mr. Scrivner: January 3, 1953 (Banking and Currency)

Provides for payments in lieu of taxes on property acquired for defense housing whether or not the property is held in the exclusive jurisdiction of the United States [amending U. S. C. 42: 1546].

H. R. 1863. Mr. Whitten; January 16, 1953 (Interior and Insular Affairs)

Provides for payments to States and local units which have issued bonds secured by real property or payable from real property taxes a sum based on Federal land holdings.

H. R. 4460. Mr. Multer; April 2, 1953 (Interior and Insular Affairs)

Provides for payments in lieu of taxes to local taxing authorities upon any real property owned by the Government of the United States or any Federal agency. Requires the Administrator of General Services to publish from time to time in the Federal Register, a list of all Federal property. Provides that such payments be determined on the basis of tax payments if such property was privately owned.

5. SHARING OF RECEIPTS

961. At the present time very little is being written about sharing of revenues, and very little in the way of legislation is being proposed. Existing legislation on sharing of revenues has been summarized above (par. 311–313). As the summaries show, the sharing arrangements are confined for practical purposes to natural resources. Various percentages of revenue are allocated to the States or their local units. One report in commenting on the lack of uniformity in the percentages, declares that they "were apparently quite arbitrarily determined, with no necessary relation to local public costs or tax losses." [70] Another simply says that "different rates of receipts sharing * * * may not be justified in all cases by the special aspects of the programs concerned. Some modifications may be needed * * *" but there are "no problems of immediate urgency." [71]

962. The Federal Real Estate Board in 1943 suggested that calculations on a receipts sharing basis was a practicable alternative to other procedures, especially where the determination of the actual tax loss and other factors with respect to each taxing district was difficult or impossible.[72]

[70] Federal, State, and Local Government Fiscal Relations, p. 282. (Letter from the Acting Secretary of the Treasury, S. Doc. No. 69, 78th Cong., 1st sess.).
[71] Federal Contributions to States and Local Governmental Units With Respect to Federally Owned Real Estate. pp. 23-24 (H. Doc. No. 218, 78th Cong., 1st sess.).
[72] The same, p. 13.

963. There are a few bills that do make minor changes in the allocation of receipts from certain public lands, and there are a few that make additional allocations to the States and local units, but there is nothing of a major character. The Bureau of the Budget bill leaves the present sharing arrangements relatively undisturbed. The Lane bill apparently also leaves these arrangements undisturbed. However, the latter bill in its statement of policy declares that the Government is not under any equitable duty to contribute to the States and local governments any sum in lieu of taxes in excess of the tax revenues the Federal property would pay if privately owned. A letter of the Department of the Interior commenting on an earlier version of this bill pointed out that certain of the payments in lieu of taxes made by the Department, such as those from the Oregon and California revested lands (see pars. 313, 626–634) exceed the taxes that would be produced if the lands were in private ownership; the letter then suggests that the bill should be made clear as to whether it intends to limit such payments.[73]

964. The fact that the revenues from certain sharing arrangements exceed the return that would be obtained if the lands were privately held illustrates one of the related weaknesses of most sharing arrangements, namely the uncertainty of amount and the fact that the amount often widely fluctuates from year to year. A memorial of the Oregon Legislature states the difficulty with respect to receipts from national forests as follows:

* * * receipts vary greatly from year to year and provide a very uncertain source of revenue which the local taxing subdivisions of the State of Oregon are unable to anticipate or forecast with any degree of accuracy in order that they may be included in their budget in conformity with local constitutional and statutory authority.[74]

965. The same thought has been otherwise stated in the following language:

Another thing is that it ought to be paid both as to amount and time of payment so that it would be predictable for the purpose of budgeting. In regard to the forest lands, for example, as you gentlemen were told by witnesses from Idaho last March, it is either a feast or a famine. In certain years and in certain times when they are harvesting, the receipts come in fast, and then later they get nothing. Of course, that ruins any budgeting officer who tries to budget. Also, the time of the payment has to be regular. Sometimes it is early and sometimes late, and sometimes next year. Of course, that ruins them for budgeting purposes. Those things seem to be important to us.[75]

966. As a protection to local governments in years in which for one reason or another contributions under particular sharing arrangements may be insignificant, it may be that a minimum annual contribution should be assured by paying a fixed percent (e. g. three-fourths of 1 percent) of the value at the time of acquisition. This would be particularly appropriate with respect to acquired or exchanged lands; it was suggested by the Federal Real Estate Board for certain conservation lands.[76] Another proposal suggested by the Federal Real Estate Board for consideration was also aimed at stabilizing shared revenue payments. This could be achieved by adopting

[73] Letter from the Department of the Interior to the House Committee on Public Lands. May 26, 1954.
[74] Congressional Record, Mar. 3, 1947, vol. 93, p. A814.
[75] Seegmiller, Keith L. Hearings (unpublished) before the House Committee on Public Lands, on H. R. 1356, June 21, 1949, pp. 14–15.
[76] Federal Contributions to State and Local Governmental Units With Respect to Federally Owned Real Estate, pp. 24, 27–28.

a 5-year moving average of receipts rather than the current year's income as the base for sharing.[77]

967. Another problem is that many of the acts for sharing of receipts provide that the payments to counties, etc., must be used for roads or schools. Of course it was the difficulty of providing roads and schools in the affected areas that in some cases gave the impetus to the legislation. However, at the present time, in many States, these activities are financed largely by the States themselves or by special taxes or allotments. Hence, the limitation in the Federal acts handicaps the counties in making the most beneficial use of the payments. Many counties have represented that if the local shares were made a part of their general fund (instead of the road or school fund), they would be much more effectively used.

6. SPECIAL ASSESSMENTS FOR LOCAL IMPROVEMENTS

971. At the present time, the Reconstruction Finance Corporation is the only Federal agency with a general statutory directive to pay special assessments for local improvements,[78] but other agencies such as the Housing and Home Finance Agency (with respect to certain defense housing)[79] also make payments. For several years, representatives of municipalities have insisted that the Federal Government should be subject to special assessments for local improvements in the same way as private property. Thus as one recently said:

> There should be provisions for consenting to the levying of special assessments for local improvements, applicable to all classes of Federal property covered by the legislation.[80]

972. The Bureau of the Budget bill (sec. 301) grants consent to State and local governments to levy special assessments for local improvements on all Federal real property (except those properties devoted to uses which are exempt from special assessments when under private ownership). The Hillelson bill (H. R. 5605 as reported) also provides for special assessments of previously taxed property transferred from the Reconstruction Finance Corporation or certain other taxed corporations to tax-exempt agencies. The Bureau of the Budget bill attached a requirement to its consent, namely, that the Federal Government shall be accorded the same rights and privileges in approving, rejecting, or contesting local improvements as are available to owners of private property. The Bureau of the Budget expressed the thought that special assessments, properly employed, are essentially land-service charges for particular improvements which enhance the value of the property, and therefore the Federal Government should pay such assessments.

973. Several Federal agencies raised serious objection to the proposals of the Bureau of the Budget bill and also to the Hillelson bill. Thus the Atomic Energy Commission in commenting on the Bureau of the Budget provision, said:

> We believe that it is possible, under title III, notwithstanding this proviso [i. e., for appeal, etc.], that local jurisdictions or improvement districts may

[77] The same, p. 26.
[78] 15 U. S. C. 607.
[79] 42 U. S. C. 1592.
[80] National Association of County Officials: Why . . . 1953, p. 10.

undertake improvement projects which would be financed in large part by assessments on Federal property and which may actually conflict with the desires and plans of the Federal Government for development of its own properties.[81]

974. The Department of Agriculture also protested that:

* * * It is our opinion that this provision is dangerous in that it would expose such property to assessments by local governments for drainage, irrigation, roads, or other types of local improvements which might be in conflict with the program for which the properties are being administered. Accordingly, we strongly recommend that this section be changed to authorize payments by the Federal Government of special assessments on Federal real property, as defined, only when it is determined by the Federal agency administering the property that the improvements are in the interest of the United States.[82]

975. The Veterans' Administration would also relate Federal aid payments to the special assessments. A letter from that agency remarked:

* * * There would appear to be a possibility that through its system of financial aid to States (e. g., financial aid in connection with road construction), Federal assistance will have been granted local governments in connection with an improvement upon which an assessment would be predicated. If this be true, it would appear inequitable not to afford the Federal Government some credit, in connection with the special assessment, for the payments already made.[83]

976. In speaking of special assessments under the Hillelson bill, the Acting Comptroller of the United States said:

* * * Nor is this Office convinced of the desirability of consenting to special assessments for local improvements as provided by the bill. It appears that there could be commenced thereunder, against the will of the Federal Government and for which no Federal need exists, projects desired by local areas or officials. Also, while such local areas would derive the benefit of such a project, their costs would be borne by the United States which may have no need or desire therefor.[84]

977. A partial answer to much of the foregoing is that in most cases the Federal Government would be no worse off than the ordinary private property owner who may not always feel that he benefits from an improvement in the exact amount as the assessment levied against him.

D. Administration, Procedures, Appeals, Etc.

981. Succeeding paragraphs will discuss such topics as who shall administer tax and in-lieu payments provided for under various proposals that have been made, the procedures for determining sums due, the right of appeal, etc.

982. Administration under present laws is vested in the agencies sharing receipts, paying taxes, or making payments in lieu of taxes. Most studies of the problem of Federal payments in lieu of taxes, and several of the bills that attempt anything like a general solution of the problem, propose that primary administration rest with the owning agency, but that there should be a permanent coordinating commission or officer to assist in the administration, study the effect of the legislation, etc. Others would place all operations under the control of a single commission or agency.

[81] Letter from the Atomic Energy Commission to the House Committee on Interior and Insular Affairs, May 20, 1953.
[82] Letter from the Department of Agriculture to the House Committee on Interior and Insular Affairs, March 5, 1952.
[83] Letter from the Veterans' Administration to the House Committee on Interior and Insular Affairs, October 25, 1951.
[84] Fisher, E. L. Hearings before a subcommittee of the House Committee on Government Operations, on H. R. 5605, July 20-21, 1953, p. 52.

983. The Bureau of the Budget bill places primary responsibility in the agencies holding or using the property, but in order to assist in bringing about uniformity in interpretation and application of a governmentwide policy, the bill (sec. 501) provides for the issuance of rules and regulations by a three-member Commission composed of the Director of the Bureau of the Budget, the Secretary of the Treasury, and the Administrator of General Services. The rules and regulations will prescribe policies, standards, and procedures under which the owning agencies will carry out their functions under the bill. The Commission may review, insofar as it deems necessary, the determination of the property-owning agencies with respect to classification of their properties and the amount of their payments, and advise or consult with them on questions of interpretation of the law and regulations. These arrangements are intended to insure a reasonable amount of uniformity throughout the Government in the application of statutory provisions which are designed to be flexible enough to permit the use of discretion by owning agencies in arriving at equitable payments over a wide range of situations. Within 5 years the Commission shall submit an extensive report with recommendations evaluating the operation and effects of the legislation. The Commission shall also have an advisory committee of up to 20 members representing the public, Federal agencies, and the national associations of State and local government officials to advise it with respect to the administration of the act (sec. 502).

984. The Knowland defense production facilities bill (sec. 6) following the pattern of the Bureau of the Budget bill, lodges the primary administrative responsibility in the Federal agencies owning or using defense production facilities, but, to promote uniform interpretation and application, assigns to the Director of the Office of Defense Mobilization the duties of general supervision and coordination.

985. However, at least one Federal office would place the entire administration in a single agency rather than have it dispersed among all the agencies. Thus in 1951 it said:

> It is believed that consideration should be given to vesting the entire administration of the program * * * in a single agency, rather than having each of the many Federal agencies administer the proposal in regard to the land it administers or over which it has jurisdiction. Such centralization might well prevent duplication of personnel and effort, reduce administrative costs, increase efficiency, and lend to a more uniform application of the provisions of the act. If so, the advantages to be gained by having a single agency administer the entire program would appear to outweigh those which the explanatory memorandum indicates would be achieved through placing the responsibility for the payments on each agency with respect to the property which it has jurisdiction over or administers. Under the proposed act * * * each Federal agency might be required to maintain personnel familiar with the constitution and laws of each State and of each local government in which that agency has property, in order to verify the claims presented by such governments for administrative payments, taxes, and assessments. Also, the prescribed procedure of having each agency administer the act in regard to its own property could result in varying interpretations, not only of the proposed act but of the regulations to be issued by the Commission. * * * It is believed that such difficulties might be obviated by the consolidation of the entire program under one agency which would, for example, be in a position to engage the services of full-time experts in the field. It would also appear to be advantageous from the standpoint of the States and local governments to conduct their negotiations with a central agency rather than with each Federal agency having property in the locality.[85]

[85] Letter from the Veterans' Administration to the House Committee on Interior and Insular Affairs, October 25, 1951.

986. The bill currently sponsored by Representative Lane (H. R. 508) would place the administration in a single Commission. This Commission would establish fair standards, uniformity, and regularity in Federal payments and seek to bring about substantial equity between local taxpayers and the Federal Government. The Commission would be composed of seven ex officio Commissioners, namely, the Secretaries of the Treasury, War, Navy, Interior, and Agriculture and the Administrators of the (former) Federal Loan Agency and the (former) National Housing Agency.

987. Commenting on the 1949 version of this bill,[86] the Department of the Interior saw little need for such a commission except perhaps in the formative period when general policies and procedures were being adopted. As an alternative, the Department suggested that initial determination of formulas or payments in lieu of taxes could be made the responsibility of the Bureau of the Budget, with the assistance of representatives from the various landowning Federal agencies.

988. Commenting on the same bill, the Comptroller General of the United States stated his belief that instead of setting up a special commission, the best interests would be served by providing that the personnel and facilities of the Bureau of Land Management be utilized in carrying out the provisions of legislation such as that proposed because as recited at length in House Report 1884 (78th Cong.), pages 50–55, this was in furtherance of the Comptroller General's idea that the General Land Office (now the Bureau of Land Management) should be provided with the necessary facilities for the acquisition, abstracting, titling, recording, and disposition of federally owned and controlled lands.[87]

989. The procedures for making payments under existing law are very loosely established. Under the statutes for sharing revenues, about all the laws provide is to require that a given percentage of the revenues shall be shared; no initiative on the part of the States or local units is required or expected. Neither is any procedure set out—nor is any necessary—under those provisions of law treating Federal property like private property. With respect to in-lieu payments, a very limited rule of procedure is sometimes written in the law, but more often the statute simply provides for making in-lieu payments or entering into agreements for the making of such payments. The new proposed legislation of a general nature is usually more specific in spelling out procedures.

990. Under the Bureau of the Budget bill (sec. 503) in-lieu payments under title I will be made to State and local governments upon the basis of applications filed with the Federal owning agency, while supplementary relief payments under title IV will be made to local governments only on the basis of applications filed with the Federal agency in accordance with rules and regulations issued by the Commission created by the bill. No payment shall be made in the absence of an application filed within 60 days after the beginning of each tax year to which the payments relate. The question whether a property is subject to an in-lieu payment, and the amount thereof, shall be determined by the Federal owning agency. Decisions on applications for payments and the actual payments themselves shall be made by the eighth month of the tax year to which the payments

[86] Letter from the Department of the Interior to the House Committee on Public Lands, May 26, 1949.
[87] Letter from the Comptroller General to the House Public Lands Committee, June 28, 1949.

apply, or by the date fixed by State or local law for payment of taxes if that date is later (sec. 504). Provisions for payments under the Knowland defense production facilities bill (sec. 5) closely follow those of the Bureau of the Budget bill.

991. Some objection has been raised to the definition of tax year contained in the Bureau of the Budget bill and the requirement that applications be filed not later than 60 days after the beginning of such tax year. The basis of the objection is that this requirement cannot dovetail with city budgets.[88] Directing attention to this, one writer has said that this Bureau of the Budget bill is a comprehensive measure, and provisions to meet the budget procedures of one class of local governments would undoubtedly conflict with budget practices of other local bodies.[89]

992. The Lane bill (sec. 7) seems to put the initiative for in-lieu payments clearly with the Commission which the bill would create. It provides that the Commission shall annually determine the amounts of taxes that would be paid by the property if it were privately owned and then making the adjustments provided for (see par. 936), pay the States and the local units such amount as will effectuate the policy laid down in the bill. The bill then continues by providing (sec. 9) that in order to facilitate the work of the Commission each of the States and local units may submit a report at such time and manner as the Commission designates which describes all Federal real property and sets forth the amounts in which such property would be taxable if it were not in Federal ownership.

993. Commenting on this last-mentioned provision, one Department has minimized the benefits to be derived therefrom. It said:

> * * * This provision would probably add little toward simplifying the work of the Commission. Very few States or local governmental units are believed to be in possession of sufficiently complete facts with respect to the amount of Federal holdings, their value, and the rates applicable to satisfy the requirements of the Commission. In most States a system of local reporting to a State agency and the provision for additional personnel at the State level would be necessary before this section would become meaningful.[90]

994. Note may also be taken of a proposal by a municipal law officers' institute which would make the State, rather than the local units of government, the agency for filing claims with the Federal Government. Thus, in speaking of in-lieu payments it was urged:

> Any tax equivalent payment shall be conditioned upon the filing of a claim therefor with the Secretary of the Treasury of the United States. All claims arising within any State shall be made and filed by a State officer to be designated for such purpose by the governor of such State. The officer so designated by the governor shall be the sole agent to represent all local government and other taxing units in making, presenting, establishing, negotiating, adjusting and settling any claim for tax-equivalent payments as herein provided.
>
> Payment of the aggregate of all claims filed and proved for all local government and taxing units within the State shall be made to a State official designated by the governor for such purpose. The officer so designated shall constitute the sole agent for the collection, receipt and distribution to local governments and taxing units of such payments.
>
> No claim shall be filed on behalf of any local government or taxing unit which is not equal to $100 or more per annum.[91]

[88] Municipalities and the Law in Action, 1952, p. 95.
[89] Guandolo, Joseph: Payments to Local Governments in Lieu of Taxes. pp. 56–57.
[90] Letter from the Department of Agriculture to the House Committee on Interior and Insular Affairs, May 1, 1953.
[91] National Institute of Municipal Law Officers: Report of the Committee on Revenue from Federally Owned Property, in Municipalities and the Law in Action, 1945, p. 156.

995. One question that bothers the Federal agencies is the thought that any payments they may have to make to the States or local units on account of their property will come out of their appropriation rather than out of a specific appropriation for all Federal property. The Bureau of the Budget bill so provides (sec. 504 (c)). The Department of Agriculture has recommended that if payments must be made by each agency, then the payments should be made out of funds specifically appropriated to the agency for that purpose.[92] The Federal Communications Commission has set forth its objections in some detail. It argued:

There is substantial question whether the adjustments sought to be achieved by this bill should be made through the intermediary of the appropriations for the particular agencies using Federal property in the exercise of their functions. In the process of securing appropriations, the net result may well be that the respective agencies will suffer a diminution in the amounts available for services and supplies necessary in the performance of their functions to the extent that funds are necessary for making the payments required by the proposed act. If payments to State and local governments are to be made in a manner which may substantially and directly affect the performance of functions of Federal agencies, the effect is that these functions are being taxed. The making of payments from a fund appropriated separately from the working appropriations of the respective agencies would enable the Congress to make an explicit and considered judgment as to the extent of allocation of Federal revenue between payments of the type contemplated by the proposed bill and the performance of functions of the Federal Government. It seems that bill S. 1519 introduced by Senator Nixon on May 22, 1951, providing in its section 10 that the Commission on Federal Contributions to State and Local Governments make the necessary payments "after the enactment of each act making appropriations for contributions to the State and local governmental units" would relieve the Federal agencies from additional financial burdens the extent of which can hardly be foreseen at the present time.[93]

996. One of the many fields of disagreement between Federal and State officials concerns the allowance of an appeal by the States and local governments from the decisions of the Federal officials. The Federal agencies hold in the negative and the States and local units urge the affirmative. There is no provision for appeal under present laws, except of course that those laws treating Federal property in the same way as private property reserve to the Federal agencies the same rights of protest and appeal available to owners of private property. Illustrative statements of the position of local governments is the following quotation:

Local government should be provided with a definite right of appeal to a commission from decisions of the Federal owning agencies respecting payments, and from the commission to a judicial tribunal.[94]

997. The Bureau of the Budget bill denies any appeal (secs. 504 (b), 507). The last cited section exempts the payments under the bill and other operations from the provisions of the Administrative Procedure Act, except so far as the public information requirements are concerned, including the kinds of rules to be issued. In explaining the reasons for this, the Bureau said:

Payments under title I [in-lieu payments] and title IV [supplementary relief payments] are to be administratively determined and presumably would be governed by the Administrative Procedure Act in the absence of a specific exemption. Since these payments are to be made as a matter of grace and provision is made for a coordinating commission, as well as for a representative advisory

[92] Letter from the Department of Agriculture to the House Committee on Interior and Insular Affairs, March 5, 1952.
[93] Letter from the Federal Communications Commission to the House Committee on Public Lands, September 6, 1951.
[94] National Association of County Officials: Why . . . 1953, p. 10.

committee, it is not necessary to subject the decisions of the Federal agencies to judicial review and the other formal procedures of the Administrative Procedure Act. It would be inappropriate to apply these procedural requirements to the consent to taxation and special assessments in titles II and III. Accordingly, all functions performed under this bill are to be exempt from the operation of the Administrative Procedure Act * * * .[95]

998. However, the National Institute of Municipal Law Officers declared:

The past experience of NIMLO members in dealings with the Federal agencies and departments should be warning enough of the vital necessity of having this act and Federal agency actions subject to the Administrative Procedure Act.[96]

999. Approaching the subject now from the other point of view, the Lane bill (sec. 12) provides that any State or local unit whose claim for payment has been disallowed in whole or in part may accept the payment tendered without prejudice and may have the disallowed portion of the claim heard and determined in the Tax Court in the same manner and subject to the same procedure, including the rights of appellate review, as is prescribed by law for the redetermination of deficiency provided for by section 272 of the Internal Revenue Code.

1000. An agency of the Government expressed its disapproval of this proposal in the following language:

The most objectionable feature of the bill is the provision in section 12 for determination of a disallowed portion of the claim of any State or local government by the Tax Court of the United States. While submission of a consolidated claim for payments in lieu of taxes by all of the taxing jurisdictions within each State, as provided in section 9, would form a useful point of departure for the Commission in calculating such payments, it would place the Federal land-owning agencies under an impossible burden if they were required to make a separate settlement which would stand the test in a court of law with each of the thousands of taxing jurisdictions within whose boundaries the Federal lands lie. To permit a State, or especially a local governmental unit, to submit any disallowed portion of its claim for payments in lieu of taxes to the Tax Court, moreover, might add to the court docket thousands of cases in which the amounts at issue would be based on estimates and judgments of a character not readily subject to judicial review.[97]

1001. Similarly, in 1949 when a bill was under consideration for paying to the States and local units 1 percent of the value of national-forest lands, provision was made for appeals from determinations of the Secretary of Agriculture to the appropriate United States district court. The Secretary of Agriculture protested this provision and said:

* * * This procedure is inconsistent with the sound principle that administrative determinations concerning Federal property should reside in the Federal official responsible for its administration. This principle is almost universally adhered to and was recently studied and reaffirmed by Congress in connection with the Administrative Procedure Act. It would also seriously interfere with the orderly and prompt administration of the act and in effect would be an invitation to every State within national-forest land to appeal, asking for a higher valuation with increased payments for its counties. The fair appraised value of national-forest land and resources must be determined by the application of uniform methods and bases on all national-forest land concerned. A change in such appraisal methods and resulting valuations on a State or regional basis would be very detrimental to the successful and economical administration of the new payment procedure.[98]

[95] U. S. Bureau of the Budget: Executive Communication No. 722, Regarding Payments in Lieu of Taxes, August 16, 1951, p. 17.
[96] National Institute of Municipal Law Officers: Report of Committee on Municipal Revenue from Federally Owned Property, in Municipalities and the Law in Action, 1952, p. 94.
[97] Letter from the Department of the Interior to the House Committee on Public Lands, May 26, 1949.
[98] Letter from the Department of Agriculture to the House Committee on Public Lands, May 2, 1950.

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