

## CHAPTER 2 LEGISLATING COLLABORATION: INSTITUTIONS AND PLAYERS THAT GAVE BIRTH TO THE ACT

The purpose of this institutional assessment is to discuss the legislative history of the Secure Rural Schools and Community Self-Determination Act (P.L. 106-393) describing the debate and interest group positions and work, along with those of the Senate and House members and the staff that ultimately determined the final form of the legislation. We also discuss in this section the institutional arrangements created in the legislation that identify the agencies and entities responsible and the processes prescribed for implementing the act. This background sets the stage for analysis of what is working and what is not working, the effectiveness of the agencies, counties, and other entities, and how well the established structures and processes achieve the goals of Title II and Title III of the legislation. Clarity in structure and processes, along with identification of outcomes, allow us to suggest ways that existing authorities and oversight of the legislation can be modified and improved. This section of the report

1. reviews the legislative history of the act,
2. describes of the institutional arrangements created by the legislation,
3. briefly reviews the work of the Forest County Payments Committee and some of its recommendations pertaining to P.L. 106-393, and
4. briefly reviews some of the issues that will challenge reauthorization of the legislation.

### *Legislative History and Intent*

#### *Policy Challenges: Federal Lands and Local Revenues*

When the federal government reserved the national forests for public purposes, states and local communities had to forego the potential revenue they might derive from those lands if they had been either transferred to local governments or divested to private sources. To compensate local governments, as well as to respond to Western hostility to the establishment of the forest reserves, in 1906 Congress directed in appropriations language that 10% of the gross receipts from the national forests managed by the newly-created Forest Service should be turned over to the states for the benefit of public schools and roads, not to exceed 40% of local income from other sources (Dana and Fairfax 1980:90). In 1908, Congress decided to share 25% of the receipts obtained from revenue producing activities on the national forests -- removing the 40% provision -- and to make the legislation permanent. There is scant legislative history of the 1908 provision and its 1906 predecessor. Since both provisions had been added on the Senate floor as amendments to Department of Agriculture appropriations bills, there was no discussion in either House or Senate reports of the provisions or the rationales for the particular compensation rates. Each time the House simply receded to the Senate's action without discussion (Gorte 1999).

Under the 1908 law, states receive the funds, although they must pass them through to local governments for use in road and school programs. The receipts that the Forest Service collects are deposited in a special treasury account (the National Forest Fund), and the proportion that each county receives is based its amount of national forest acreage.

In 1937, Congress extended the revenue sharing to lands managed by the U.S. Department of the Interior Bureau of Land Management (BLM), by directing that 50% of revenues from the Oregon and California (O & C) grant lands and the Coos Bay Wagon Road grant lands be shared with the counties. Unlike the Forest Service program, which funds roads and school programs, payments under the BLM program can be used for any local governmental purpose.

Other programs also provide for county payments. (For a brief description of these programs see Gorte 2000.) One of the most significant for the purposes of this assessment is the Payment in Lieu of Taxes (PILT) program that Congress approved in 1976 to compensate counties directly for the tax exempt status of lands in their jurisdictions. PILT payments, which are administered by the BLM, provide a fixed minimum payment per acre, and the maximum amount received is reduced depending upon how much revenue is received under other revenue sharing programs, including payments to counties made under Title III of the legislation.<sup>1</sup> Unlike P.L. 106-393 payments that are appropriated from the National Forest Fund, PILT payments require annual appropriations from Congress, and thus can, and regularly are, paid below their full amount.

#### *Declining Timber Revenues Reduced Payments*

Historically, the majority of revenues generated from federal forest lands derived from timber sales. After World War II, as timber harvest levels on the federal forests grew, local communities reaped the benefits that increase receipts brought for school and road funding and county general funds from O&C revenues. However, in recent years as public debate swirled over the long-term sustainability of high timber harvest levels, the value of old-growth forests, and the fate of habitat for endangered species, federal timber harvest levels began to decline significantly in many areas of the country. Timber receipts fell an average of 70% between 1985-2000 and as much as 90% in some areas (Congressional Record 2000, S. 8518). Local governments and schools not only experienced the social impacts that a loss of timber jobs and businesses created in their communities, but also saw a precipitous decline in needed revenues for schools and roads. Moreover, even with the payments, the amounts fluctuated widely – rising or falling an average of 30% annually (Gorte 2000:4).

As the effects upon local budgets became apparent, there were several attempts to address the problem. Local governments believed that the U.S. government had made a “social compact” or “contract” with the states when the lands were permanently reserved for a general public purpose, and had a duty and obligation to compensate them for forfeited economic opportunities. However, because local revenues were directly tied to revenue producing activities on federal forests, the county receipt payment program was also subject to criticism that it provided a perverse economic incentive for communities to support commodity-producing activities, and a political incentive to align with the timber industry at the expense of environmental protection (Sample 1990:220-221; U.S. Congress Office of Technology Assessment 1992:151). Although suggestions from time to time had been made that county payments should be based on the value of the national

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<sup>1</sup> The PILT program’s formulas are so complex that one Congressional Research Service report for Congress was entitled PILT (Payments in Lieu of Taxes): Somewhat Simplified (Gorte 1998).

forest lands rather than on receipts, these arguments largely came from eastern areas where land values were high but timber receipts generally low (Dana and Fairfax 1980:91), and the program based on receipts persisted.

Prior to the introduction of legislation in 1999 that led to the 2000 act, several proposals for dealing with declining county payments had been brought forward with varying degrees of success. The Reagan Administration's FY 1985 and 1986 budget proposals, for example, again called for tax equivalency (compensation equivalent to local taxation), but primarily because counties viewed the details of the proposals as actually reducing payments, the proposals did not receive legislative consideration (Gorte 2000:4-5). A few years later, a study of Forest Service planning done by the Congressional (now defunct) Office of Technology Assessment also called for a more simplified and equitable system of tax equivalency to replace the 25% payment system, but again no action occurred (U.S. Congress Office of Technology Assessment 1992). Although tax equivalency is often enunciated as a goal and a measure of parity, it has never gained sufficient political support.

The Clinton Administration successfully proposed a plan for dealing with declining county receipt payments in the Pacific Northwest. One of the economic relief measures contained in the Northwest Forest Plan was a proposal to compensate counties for revenue traditionally tied to federal timber receipts, which Congress enacted in the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66). This legislation provided temporary "safety net payments" to the 72 counties containing 17 national forests and O&Clands in Oregon, Washington, and northern California affected by the plan. However these payments were ratcheting down and were due to expire altogether by October 2003. Moreover, no similar measures had been enacted that would apply to other counties in the country that had suffered similar declines in shared revenues.

The Clinton Administration, however, failed in its attempts to move legislation that would permanently address the county receipt payment problem. The Administration's main objectives with its proposal were to find a permanent solution, stabilize payment levels, and decouple county payments and agency revenues (Dombeck 1999). In its fiscal year 1999 budget request the Administration proposed legislation to extend the spotted owl payments to all national forests. However, no legislative sponsors could be found for the proposal, possibly because to pay for the program, funding for other USDA agricultural programs would be reduced (Gorte 2000, p. 14), and because the proposal called for decoupling. Similar proposals were put forth in the 2000 and 2001 budget requests, but again no action was taken.

Finally, the National Association of Counties (NACo) had its own proposal for a temporary solution. NACo is a national organization created in 1935 that provides counties a voice in Washington, D.C. It now consists of more than 2000 counties representing 80% of the nation's population. NACo's proposal included the establishment of local advisory committees to make recommendations on payments and on federal land management. It also kept the linkage between revenues and payments intact.

Frustrated with no action on any of the proposals, school superintendents and county commissions from northern California proposed their own formula for relief. Congressional staff, however, pointed out to them that securing legislative approval would be impossible without first broadening the scope and providing relief beyond

northern California. Heeding this advice, the northern California group began to broaden its base, evolving into the National Forest Counties and Schools Coalition. It quickly brought in the timber industry, which assisted in lining up other industrial and business interests and local chambers of commerce. The coalition successfully lobbied southern and eastern states to join the coalition, showing them that what was happening with payments in the West could happen to them also, and arguing that legislative relief would promote consistency in their regions, where timber sales receipts generally fluctuate. With a federal budget surplus, the coalition could argue there would be no costs and only benefits to schools and counties. Importantly, the coalition joined with National Association of Counties and the National Education Association, forming a formidable power block. School officials, for example, had dramatic stories to tell, like having to reduce to four-day weeks, lay off teachers and nurses, and other employees, increase class size, and reduce or eliminate programs. The coalition developed a set of principles, drafted its own legislation, and launched an extensive lobbying effort in Washington.

### *Congressional Deliberations and Issues*

Pressed by the counties organizations, four bills were introduced in Congress during the 106th congressional session: HR 1185 by Peter DeFazio (D-OR); HR 2868 by DeFazio et al.; HR. 2389 by Nathan Deal (R-GA) et al., and Senate 1608 by Ron Wyden (D-OR) et al. Generally, these bills were based either on the coalition's or the administration's proposals. It would be HR 2389 and S1608 as amended by negotiations between the two houses and the administration that would dominate the legislative debate. HR 2389 with 36 co-sponsors was introduced June 30, 1999, and referred both to the House Committee on Agriculture (the committee of jurisdiction over the 1908 act) and the House Committee on Resources. Senator Wyden's bill, S 1608 with 12 co-sponsors, was introduced September 21, 1999, and referred to the Committee on Energy and Natural Resources.

The Congressional Research Service succinctly summarized the major issues that the several pieces of proposed legislation faced (Gorte 2000). First, what should be the basis for compensation—tax equivalency or historic payments as determined by some base period? And if the latter, given fluctuating payments, what time periods should be chosen as the base? Different base periods yield different payment levels. Second, should the program be temporary or permanent? Third, would the geographic basis for allocating funds be by forest, by states, or to counties as allocated by the state? Again, depending on which is chosen as the basis of calculation the amount of compensation varies. Fourth, should a portion of the revenues be required for reinvestment on Forest Service and BLM lands? Fifth, would the funds be permanently appropriated, subject to annual appropriations, or taken first from revenues and then from agency appropriations for non-revenue producing activities? Finally, what would be the program's relationship to other payment programs, particularly PILT?

### *Proponents and Opponents*

The need for legislation was supported by a broad coalition of interests (See Table 1). Congressional members variously and routinely cited between 800-1000 organizations in all 50 states that supported the legislation. In addition to the National Forest Counties and Schools Coalition in partnership with the National Education Association, supporters

included both labor and business organizations, groups generally at odds with one another. In the House, supporters were also able to bring in the Congressional Black Caucus, which was instrumental in building support in the Northeast. There was no doubt that this was a formidable collection of interests backing the legislation.

**Table 1. Some Interest Groups in Support of Legislation**

National Forest Counties and Schools Coalition
Alliance for America
American Forest and Paper Association
American Association of Educational Service Agencies
American Association of School Administrators
Forest Products Industry National Labor Management Committee
Independent Forest Products Association
International Association of Machinists and Aerospace Workers
National Association of Counties
National Association of County Engineers
National Educational Association
Organizations Concerned About Rural Education
The Paper, Allied Industrial, Chemical, and Energy Workers International
People for the U.S.A.
The Southern Forest Products Association
United Brotherhood of Carpenters and Joiners of America
United Mine Workers of America
United States Chamber of Commerce
Western Council of Industrial Workers
AFL-CIO
American Federal of State, County, and Municipal Employees

Source: Congressional Record 1999, H. 11403; Congressional Record 2000, S, 8519

Generally, environmental groups were opposed to the legislation, fearing the capture of the proposed advisory committees by timber and other commodity users. These fears were rooted both in their general suspicion of collaborative resource management as well as by the real connections between the National Forest Counties and Schools Coalition and commodity interests. The coalition's principles supported both timber sales on federal forest lands and the coupling of revenues and county payments. It would have therefore have been impossible to bring environmental groups into the coalition. While environmental groups were not opposed to county payments per se, they were on record against "perverse incentives," whereby harvesters received credits or dollars that would encourage and pay for more harvests, and, even more severe, any commercial sales on national forests. Environmentalists dubbed proposals that retained the link between timber revenues and county payments, "clearcuts for kids."

*Deliberations in the House of Representatives*

As introduced, HR 2389 most closely reflected the coalition's principles. It was referred to both the House Committee on Agriculture and the House Committee on Resources. Committee hearings were held by House Agriculture Subcommittee on Department Operations, Oversight, Nutrition, and Forestry, chaired by Representative Bob Goodlatte (R-VA), and by the House Subcommittee on Forests and Forest Health. However, because the resources committee was more polarized than agriculture, and because agriculture had several members who were interested and supportive, the agreed-upon strategy was to pull the bill from a vote in resources and deprive environmental interests a chance of killing the bill in that committee. HR 2389 was reported out of the full Committee on Agriculture October 18, 1999, with minimal opposition (U.S. House 1999).

While several conservative Democrats lined up in support of the bill, liberal congressional Democrats largely viewed the bill as a timber industry bill. The Democratic Clinton administration also testified in opposition to the House legislation. The administration wanted stable, permanent payments that separated revenues from payments, decoupling "children's education from the manner in which national forests are managed." It opposed the House legislation because of its failure to decouple, and because it feared that the House legislation would require funds to be diverted from other non-revenue generating Forest Service management programs (Dombeck 1999). Conservatives in the House, on the other hand, who had just finished welfare reform, thought that decoupling was bad policy. They saw it as another form of welfare, while coupling, they argued, provided jobs and promoted economic development. Moreover, the timber industry was indeed concerned about the potential loss of political support for harvesting if counties, communities, and schools did not have financial incentive to render that support. Likewise, many counties were suspicious of decoupling proposals, because they liked the pressure that coupling local school budgets to timber harvests placed on local agency officials.

Before the floor vote on the House bill on November 3, 1999, an amendment in the nature of a substitute was offered by Representative Goodlatte, and it was the Goodlatte substitute that the final floor debate on the bill considered. Goodlatte's amendment began to reflect some of the ongoing informal negotiations with the Senate on their version of the Act. It, for example, included provisions for local resource advisory committees to recommend reinvestment projects, an idea that had originated in the Senate.

The Goodlatte substitute relied on appropriations to fund the bill. Representative Sherwood Boehlert (R-NY), who voted for the final House bill, noted during the final floor vote that House supporters agreed the Senate would need to use mandatory funds when it took action (Congressional Record 1999, H. 11399). His concerns echoed those of both administration and environmental groups who argued that dependence upon annual appropriations would cannibalize regular agency appropriation for land management activities. The League of Conservation Voters, Boehlert noted, had specifically addressed this point in a mailing to its members (Congressional Record 1999, H 11399).

During the floor debate on the Goodlatte substitute, Representative Mark Udall (D-CO) offered an amendment that the bill's supporters termed a "poison pill." Focusing

on provisions in the House legislation that would require counties to reinvest 20% of their payments for work on federal lands, Udall's amendment proposed more discretion for local governments, meaning "that a county would not be forced to spend 20% of its payments for doing things that otherwise would be funded under the budgets of the Forest Service or the Bureau of Land Management" (Congressional Record 1999, H 11409). His amendment, which received support from other House Democrats, would have allowed counties to use 20% of their payments for work on federal lands, but not require it. Not surprisingly, supporters of the Goodlatte substitute emphasized the need to stand firm against any floor amendments, arguing that the legislation was as good as it gets, and that such an amendment was a deal breaker that would not survive in the Senate, which had not yet passed its version of the legislation. Supporters countered that it was important to couple lands and counties and lauded the benefits that creating hundreds of Quincy Library Groups would bring as resource advisory committees were formed to review proposed reinvestment projects (Congressional Record 1999, H 11412-11413; H11415-11416). (The Quincy Library Group, a local California collaborative of divergent interests established to give a greater voice to local communities in national forest management, had successfully sought legislation to pursue its forest fuels thinning, restoration, and management plans.) Supporters pointed out that agreeing to the 20% figure was a concession by the schools and counties coalition and should be considered a victory for environmentalists because it minimized the impact of harvesting (Congressional Record 1999, H 11413). Udall's amendment was defeated by a vote of 241-186, and on November 3, 1999, the House approved HR 2389, The County Schools Funding Revitalization Act of 1999, by a vote of 274-153. Before the vote, Representative Charles Stenholm (D-TX), (the Democratic floor manager) noted that the Administration still opposed the bill, but asserted "we are making good progress, and I believe that it is very highly probable that this can become law" (Congressional Record 1999, H11402). The administration, however, viewed the House bill as a "non starter."

### *Deliberations in the Senate*

Senate Bill 1608 was referred to the Committee on Energy and Natural Resources. Senator Larry Craig's (R-ID) Subcommittee on Forests and Public Land Management held hearings on both October 5 and October 19. The full committee favorably reported the bill, which had been recommended by a voice vote, on April 25, 2000. Decoupling, the reinvestment program, how to fund the bill, and county choice were several of the issues that the Senate considered during its deliberations on the bill.

As originally drafted, Senator Wyden's bill simply provided for payments, therefore it was a full decoupling bill. Senator Craig (the subcommittee chair) favored coupling and a provision that was also in the draft of H 2389 as introduced, i.e., if historic timber harvest levels were not achieved, the shortfalls would be taken from the Forest Service's operating budget. Although recognizing that this provision largely reflected county anger with federal agencies, Wyden believed it unnecessarily punished the Forest Service. As an alternative Wyden successfully proposed to Craig what eventually became Title II of the legislation—a program by which counties would reinvest part of their county payments in projects on federal lands and have those projects reviewed and recommended by local advisory committees. The reinvestment program would repair relationships between the federal agencies and local government by giving counties

responsibilities for projects on federal lands, and create more opportunities for public involvement. Craig and Wyden then directed their staffs to flesh out the details. Considerable negotiations thus ensued. For a model for the local advisory committees the drafters explicitly looked to the BLM's grazing land advisory committees (also called Resource Advisory Committees). Those committees had been initially promoted in the 1990s by the Clinton Administration to assist with the development of the agency's range management plans, and were perceived as an operating success. The drafters adopted the BLM RAC's structure of representing three areas of interests – industry, environmental, and local government – but with one significant difference: three out of the five representatives in each area represented would have to agree for projects to move forward. With this supermajority requirement, no one group – be it counties, industry, or environmentalists – could be shut out, providing a sense of assurance to Senate constituencies on each side of the issue. Moreover, approved projects would be more difficult to appeal because they had been agreed upon in a balanced, open process. In addition to debating committee structure, negotiators also spent a considerable amount of time settling upon the categories of projects that could be funded.

Senator Craig's strategy to shepherd the bill through the Senate was to get a bill that would pass by unanimous consent. It is difficult for bills to get floor time for Senate debate, and unanimous consent would jump this hurdle. Second, Craig feared that if Al Gore won the 2000 election, restrictions on the kinds of projects and management practices that had been pushed by the Clinton administration, such as protections for old-growth and roadless areas, would reappear. These had been rejected during the negotiations, and a unanimous consent bill that left no paper trail or a close recorded vote provided the Senate more leverage during implementation to ensure that those proposed restrictions remained on the cutting floor. Finally, once floor time is granted, opportunities emerge for other senators to attach their particular causes to the bill under consideration, which, if controversial, could bring down the entire bill.

Also because of Senate rules and practices, Senate Democrats and the Clinton administration had more leverage to affect the form the legislation that would emerge. As part of its insistence upon decoupling, the administration, for example, testified that it wanted only restoration and maintenance projects to be funded through the reinvestment program “to ensure that receipts for commercial timber sales no longer go towards funding schools and roads and watershed health projects” (U.S. Senate 2000, p. 28). At the time the legislation was moving through, maintenance backlogs on forests were of significant concern within the agencies. The administration saw the legislation as a source of funding for maintenance and restoration, and for the creation of good restoration-related jobs. This, it believed, was a win-win situation while eliminating the funding of such projects through timber receipts and eliminating the perverse incentive to insist on higher cut levels for funding restoration. (The final version would specify that 50% would be dedicated to road maintenance, decommissioning, or obliteration or to restoration of streams and watersheds.)

The administration was also able to insert into the bill a provision for a merchantable material contracting pilot program. This program requires that the harvesting or collection of merchantable materials and the sale of such material be implemented using separate contracts (termed separating the log from the logger). Environmentalists embraced this idea, believing it reduces incentives for loggers to use

environmentally damaging projects in order to maximize sale profits. Over strong objections from House negotiators, the Senate prevailed and the program was inserted in the legislation, but with a gradually increasing percentage of projects that would be subject to the pilot program, and with calls for an assessment of the program by September of 2003.

Environmental interests were also able to exert more influence in the Senate than in the House. For example, the Forest Service Employees for Environmental Ethics (FSEEE), an organization of former and current Forest Service employees and citizens, particularly objected to a provision that first emerged in the Goodlatte substitute. This provision would have all revenues from any project funded in whole or in part by Title II to be returned to the Secretaries in special regional accounts to fund additional projects submitted by counties and reviewed by the RACs. FSEEE claimed this revolving fund provision would make it possible for the committees to invest just \$1 in every revenue generating project, capture the dollars, and end up controlling a significant portion of agency budgets. It claimed credit for rallying its supporters and securing the cooperation of Senator Wyden (D-OR) to strip this provision from the legislation (FSEEE 2005). The final bill would specify that any revenues generated by projects funded under the bill would be returned to the treasury.

There was considerable discussion of what entity would officially possess the reinvestment program's dollars. It was important to senators that the dollars remain federal dollars, otherwise environmentalists could claim the act was devolving to local control. Consequently, once the counties make their choice, the dollars are held by the Forest Service or BLM.

Senator Pete Domenici's (R-NM) support as chair of the Budget Committee was also instrumental in determining how the bill would be funded. As noted above, the House-approved bill was an authorizing bill, that is, appropriations would need to be subsequently sought and legislatively approved. With Domenici's support the Senate bill provided for mandatory spending. After negotiations with the administration and the Budget Committee the final bill also adjusted the formula by which the full payment amount would be calculated, reducing overall costs, and bringing the bill into line with the 2001 budget resolution (Congressional Record 2000, S 8520). Senator Jeff Bingaman (D-NM), ranking member of the Budget Committee, succeeded in attaching a piece of his own legislation, an authorization for a \$5 million dollar cooperative forest restoration program for New Mexico.

The issue of county choice manifested itself in two ways. First, there was intense debate whether to replace the 1908 act altogether or to give counties a choice. Some counties, for example, wanted to keep the 1908 act because their receipts were increasing. As a compromise to keep these counties in support of the bill, the final legislation would allow counties to opt into the bill or stay under the 1908 law. Commenting on the final negotiated bill, Senator Wyden pointed out that "county choice is critical to the bill" (Congressional Record, 2000 S8519).

County choice also manifested itself in a second way in the Senate. County options, for example, had been advanced by organizations such as the Conservation Leaders Network, which would subsequently claim partial victory for the inclusion of Title III in the final Senate version of the bill (Conservation Leaders Network, nd). The organization, with headquarters in Wedderburn, Oregon, is dedicated to forging alliances

among county commissioners, environmental leaders, and citizens. The organization had championed the idea of allowing counties that opted into the legislation to spend 100% of their payment on schools and roads and not be forced to spend a percentage on forest management projects. More than 125 county officials signed on to a support letter in the spring of 2000. The Wilderness Society worked with the network in support of the amendment (Conservation Leaders Network, nd). As they had done in the case of the Udall amendment in the House, the National Association of Counties and other supporters of the legislation opposed giving counties an option to spend all of their county payments on non-forest management projects.

Although Senator Baucus (D-MT) did not introduce the exact option preferred by the environmental groups, he did craft what would be included as Title III in the final bill. While Title II relied on the resource advisory committees to recommend projects, Title III would bypass the resource advisory committee structure and the Forest Service or BLM—which was fine with environmental groups—and allow the counties themselves to approve projects in a number of specified areas. Designed as an incentive to lure counties away from Title II, Title III more fully reflected decoupling and addressed the interest of some county commissioners and environmentalists. In arguing for giving counties a broader range of choice of projects that could be funded, Baucus strategically and skillfully argued that, if the legislation was truly about self reliance and community self-determination (the title of Wyden’s bill), then there was no reason not to let the counties decide how to use their money. Baucus’s title also took advantage of the tension in the county schools coalition between those who wanted coupling and those who didn’t care about politically supporting the timber industry and only wanted the payments. To overcome Senator’s Craig’s insistence that the kinds of projects to be funded not be wide open, however, a list of the kinds of projects counties could fund was inserted into the bill. Title III responded to the needs that counties had for various fuels and fire related activities, such as fire prevention, fire fighting, emergency services, and defensible space education, and Representative DeFazio’s interest in work camps. Title III couldn’t be killed but it was modified.

On the evening of the Senate vote, Senator Wyden addressed the coupling/decoupling issue, noting, “altering the link between timber harvest and county payments does not mean we seek to sever the ties between people and the land” (Congressional Record, 2000 S8519). Therefore, on the one hand, the final negotiated bill did break the financial and political link between education funding and revenue producing activities, which could be legitimately argued achieved decoupling. On the other hand, the provisions requiring counties to direct some of their payments to projects on or benefiting federal lands also legitimately supported the argument that coupling had been maintained. Additionally, even if one conceded that the financial link was severed, it amounted only to a temporary severance because of the sunset provision in the bill. Each side could thus claim victory in terms of the decoupling/linkage issue. Such is the strategy of building successful bi-partisan legislation.

The final Senate bill – The Secure Rural Schools and Community Self-Determination Act of 2000 – as negotiated between the administration, the House, and the Senate, passed the full Senate in the nature of a bi-partisan floor managers’ substitute (Senators Craig and Wyden) by unanimous consent, on September 13, 2000.

### *A Bill Becomes a Law*

Although House members were less than enthused with certain aspects of the Senate bill, especially Title III, the Senate wanted to avoid going to conference committee to reconcile differences between the two bills and then return the bill to the Senate floor for a vote. If they had to return with a conference report, and items such as Title III had been deleted, supporters could have then placed a hold on the bill. (A hold could have delivered a fatal blow to the bill's chance of success.) Thus provisions like Title III or the merchantable pilot program, which might have normally fallen out during formal conference proceedings, remained in the bill. In addition, the Administration's position was that the House would need to accept the Senate version. In the end, Senate strategy and mores prevailed over the House version of the bill.

The House subsequently approved the Senate amendment to the House bill by voice vote on October 10, 2000, and it was signed into law by President Clinton on October 30, 2000. Of particular significance: unlike most pieces of legislation, the bill passed during one congressional session, and it passed as a stand-alone piece of legislation, without being attached to another piece of legislation as a mechanism to secure quicker passage.

### *Institutional Design*

As enacted, the Secure Rural Schools and Community Self Determination Act of 2000 (P.L. 106-393) has three purposes:

- (1) To stabilize payments to counties to provide funding for schools and roads that supplements other available funds;
- (2) To make additional investment in, and create additional employment opportunities through, projects that improve the maintenance of existing infrastructure, implement stewardship objectives that enhance forest ecosystems, and restore and improve land health and water quality. Such projects shall enjoy broad-based support with objectives that may include, but are not limited to –
  - (A) road, trail, and infrastructure maintenance or obliteration;
  - (B) soil productivity improvement;
  - (C) improvements in forest ecosystem health;
  - (D) watershed restoration and maintenance
  - (E) restoration, maintenance and improvement of wildlife and fish habitat
  - (F) control of noxious and exotic weeds; and
  - (G) reestablishment of native species.
- (3) To improve cooperative relationships among the people that use and care for Federal lands and the agencies that manage those lands.

Significantly, Congress expected the act to be a temporary fix, and gave it an expiration date of September 3, 2006.

### *Title I*

Title I essentially allows counties with national forest funds to elect to continue receiving payments under the old 25% formula, 50% for those counties receiving BLM funds, or they can choose instead to receive an amount that is calculated from the three highest receipt payments and safety net payments under the Northwest Forest Plan made to an eligible state during the period between fiscal year 1986 through fiscal year 1999.

(The latter is termed the full payment amount.) Election to receive the old 25% or 50% payment remains effective for two years, while the full payment remains effective through fiscal year 2006, when the act is set to expire. Under the full payment option counties that receive distributions from the agencies in excess of \$100,000 per fiscal year must then use between 80 and 85% of their dollars consistent with what the old formulas required. They then can then choose one or more of three options for use of the remaining 15 to 20%: (1) use under Title II of the act, (2) use under Title III of the act, or (3) return to the treasury. The full payment amount is adjusted for changes in the Consumer Price Index. Thus counties can continue to be linked to revenues generated under the old receipt payment laws, or, under the full payment option, they can elect to receive a secure payment that is not linked to revenue generating activities on the federal lands.

According to a study conducted by Boise State University, Title I has been successful in accomplishing its stated purpose of stabilizing payments (Ingles 2004). The vast majority of the counties receive more money from the act than they would have under the 25% payment method. By 2003, 86% of all eligible counties elected to participate in the program.

The Forest Counties Payments Committee's (2003) study examined the fiscal effects of the act. It concluded that the counties electing payments under the act received a substantial increase in federal land payments, even after the offsetting decline in PILT payments. It also concluded that counties not associated with the act also were better off because the effect of the prorated reduction in PILT payments was then lessened. However, even with the addition of the act, tax equivalency is not achieved, although the gap between federal revenue sharing payments and income from taxes is getting smaller (Gebert 2005).

Not all counties have opted into the act. The Boise study found jurisdictions in western and southern states more likely to do so than counties in the Great Lakes area. In the Great Lakes region, receipts under the 25% payment option are now higher than if payments were calculated under the formula contained in the Secure Rural School act (Ingles 2004:13).

### *Title II – Projects to Benefit Federal Lands and RACs*

Title II outlines the process by which special projects under the title can be developed and approved, and directly addresses the second and third stated purposes of the act. Its legislative intent is to forge a new federal-county linkage and enhance cooperative relationships between local people and the federal land management agencies. It legislatively mandates collaborative approaches to decision-making, specifies the mechanisms by which such collaboration shall occur, and provides dollars for collaborative efforts.

Projects in the seven categories enumerated in the second purpose of the act are eligible for funding under Title II. However, 50% of all project funds (nationally) must be used for projects primarily dedicated to road maintenance, decommissioning, or obliteration, or restoration of streams and watersheds. Projects can either be undertaken entirely on federal lands, or on non-federal lands if the projects would benefit resources on federal lands.

Resource Advisory Committees (RACs) established under this title are the principal mechanism by which eligible projects are initiated and approved. RACs consist

of 15 members appointed by the respective secretaries for three-year terms and exist to improve federal-local cooperative relationships and to advise the land management agencies. (The Secretary of Agriculture delegated his appointment authority to the Under Secretary overseeing the Forest Service; in the Interior Department authority remains with the Secretary.) The title makes clear that membership must be balanced in terms of the interests represented.

There is flexibility in RAC creation, in that RACs may be established for part of, or for multiple, units of federal land. As noted above, the structure and membership of the RACs are derived from language establishing the BLM grazing land Resource Advisory Councils. To ensure such balance, the title outlines the community interests that must be represented in three separate categories:

- (1) five persons who
  - (i) represent organized labor;
  - (ii) represent developed outdoor recreation, off highway vehicle users, or commercial recreation activities;
  - (iii) represent energy and mineral development interests;
  - (iv) represent the commercial timber industry; or use permits within the area for which the committee is organized
  - (v) hold Federal grazing permits, or other land use permits within the area for which the committee is organized.
- (2) five persons representing –
  - (i) nationally recognized environmental organizations;
  - (ii) regionally or locally recognized environmental organizations;
  - (iii) dispersed recreational activities;
  - (iv) archaeological and historical interests; or
  - (v) nationally or regionally recognized wild horse and burro interest groups.
- (3) five persons who –
  - (i) hold State elected office or their designee;
  - (ii) hold county or local elected office;
  - (iii) represent American Indian tribes within or adjacent to the area for which the committee is organized
  - (iv) are school officials or teacher; or
  - (v) represent the affected public at large.

A person is appointed to the RAC after a call for nominations and submission of background information and recommendations. As the process has been implemented in the Forest Service, field evaluation teams review the submitted information. They also develop additional criteria by which applicants are evaluated, including for example, geographic distribution, gender, ethnic diversity, consensus-building ability, and active participation in current natural resource issues. Discussions with county commissions and other organizations also take place. Recommendations are then forwarded to Washington for procedural checks and appointment. To date, no field recommendations have been overturned at the Secretarial level.

To further collaboration and balance, any project recommended by a RAC must have been approved by a majority of the members within each category. This supermajority requirement falls between an absolute consensus model and a simple

voting majority model. Approval for a recommended project ultimately, however, lies with the agency, and is typically made by a Forest Supervisor or a district manager for the BLM.

RACs are subject to the terms of the Federal Advisory Committee Act (P.L. 92-463), which requires advisory committees to be officially chartered, have fairly balanced membership, have a designated federal official (DFO) or employee to approve the agenda for each meeting, and follow formal administrative procedures, such as publishing notices of meetings in the Federal Register, taking detailed minutes of meetings, and opening all meetings to the public.

All projects recommended by RACs must conform to the respective agencies land management plans, and are subject to environmental review. The respective secretary has sole discretion to approve or reject a forwarded project, and rejections are not subject to administrative appeal or judicial review. The title also sets forth what is required to be documented in each proposal, including expected outcomes, project costs, source of funds, project duration, and detailed monitoring plans.

In what is another novel institutional arrangement of the act, the federal government provides payments (federal dollars) to counties, and the counties have the authority to decide whether to allocate between 15 and 20% of those dollars to Title II and/or Title III or return them to the treasury. While states have been given authority to allocate federal dollars (e.g., fire assistance dollars), in no other legislation are local governments given the authority to determine whether federal dollars may be considered county or nonfederal dollars by allocation to Title III, or remain as federal dollars by designating them for Title II use. In the case of Title II, after the RACs recommend projects and project funding levels and they are approved by the designated federal official, the dollars then “turn back into federal dollars.” As federal dollars, the federal agencies are responsible for the contracts, grants, or cooperative agreements to implement the projects.

Title II also contains a provision for the merchantable material contracting pilot program. Under the program, the percentage of projects involving merchantable materials that would be subject to the pilot program increases each subsequent year, up to 50% of all such projects. The act also required the General Accounting Office (now called the Government Accountability Office) (GAO) to evaluate the program and report upon its assessment by September 30, 2003. By the time the GAO undertook its assessment, however, only 13% of all forest-related projects were expected to generate any merchantable material and thus be eligible for the pilot program, and only six were to be conducted under the terms of the pilot program. Moreover, none of the six had been implemented. The GAO briefed the Congress on the status of the program in May 2003, and because of the small number of projects, it was mutually agreed upon not to proceed with any further assessment (General Accounting Office 2003). This program is not reviewed as a part of this assessment.

### *Title III – County Projects*

Counties may decide to skip participation in Title II and participate in Title III. Funds used under this title are termed county funds. There are six authorized uses for these dollars outlined in the act:

(1) Search, rescue and emergency services. – An eligible county or applicable sheriff’s

department may use these funds as reimbursement for search and rescue and other emergency services, including fire fighting, performed on Federal lands and paid for by the county.

(2) Community service work camps. – An eligible county may use these funds as reimbursement for all or part of the costs incurred by the county to pay the salaries and benefits of county employees who supervise adults or juveniles performing mandatory community service on Federal lands.

(3) Easement Purchases. – An eligible county may use these funds to acquire –  
(A) easements, on a willing seller basis, to provide for non-motorized access to public lands for hunting, fishing, and other recreational purposes;  
(B) conservation easements; or  
(C) both.

(4) Forest Related Educational Opportunities.– A county may use these funds to establish and conduct forest-related after school programs.

(5) Fire Prevention and County Planning.– A county may use these funds for  
(A) efforts to educate homeowners in fire-sensitive ecosystems about the consequences of wildfires and techniques in home siting, home construction, and home landscaping that can increase the protection of people and property from wildfires; and

(B) planning efforts to reduce or mitigate the impact of development on adjacent Federal lands and to increase the protection of people and property from wildfires.

(6) Community Forestry. – A county may use these funds towards non-Federal cost-share requirements of section 9 or the Cooperative Forestry Assistance Act of 1978.

Unlike Title II projects, the selection of Title III projects is entirely decided by county officials. Secretarial approval is not required. Projects undertaken under Title III, however, can only be approved after a 45-day public comment process, and after having been sent to the appropriate RAC, if one exists for the county. County funds are counted against PILT payments.

#### *Additional Titles – Titles V-VII*

While Titles II and III are our chief interest in this study, the act also contains additional titles. Title IV covers miscellaneous provisions, specifying, for example, that funds made available under the act are in addition to the agencies' annual appropriations, and allowing the concerned secretaries to issue implementing regulations. Title V makes a clarification in terms of how the shared state-federal revenues from onshore mineral and geothermal activities are calculated, correcting a separate problem that had emerged with another revenue-sharing program. Title VI outlines the Community Forest Restoration Act, authorizing the New Mexico collaborative restoration program. Finally, Section 4 of the bill ensures that county payments under the act are included in the calculation of PILT payments.

#### *Forest Counties Payments Committee*

As originally introduced in the House, HR 2389 contained a provision for a county payments committee composed of seven members that would study alternatives and provide recommendations for permanent resolution of the county payments problem.

The proposal called for a seven-member committee composed of: the Chief of the Forest Service or a designee with significant expertise in sustainable forestry; the director of the Bureau of Land Management or a designee with significant expertise in sustainable forestry; the director of the Office of Management and Budget, or the director's designee; two members who are elected members of the governing branches of eligible counties, one to be appointed by the President pro tempore of the Senate (in consultation with the chairmen and ranking members of the Senate's committees of jurisdiction) and other to be appointed by the Speaker of the House (similarly in consultation); and two members who are elected members of school boards for, superintendents from, or teachers employed by, school districts in eligible counties (again with similar procedures of House and Senate appointment). The bill also allowed an executive director and other staff to be employed.

Several concerns were raised about the committee (Gorte 2000:8). First, there were concerns about how the committee could effectively meet a provision in the bill that required the committee to evaluate the program six months after the first of the payments were distributed under the law. Another criticism centered on the provision that the committee's recommendations for a permanent solution be "at or above" the temporary payments level, and that the committee be charged with developing recommendations for maximizing the amount of revenues collected from federal lands. Finally, questions were raised about committee composition. The requirement for two local county officials and two school officials made the majority of the committee dominated by the very beneficiaries of the payments; this was likened by opponents as the "fox guarding the henhouse." As an alternative to the committee outlined in HR 2389, opponents proposed an independent, non-partisan organization qualified to assess both the local and fiscal implications and the land management ramifications. Both the General Accounting Office and the National Academy of Sciences were cited as possible candidates.

Although provision for the Forest Counties Payments Committee was dropped during the legislative process, House and Senate negotiators agreed that it would be brought forward in the Interior appropriations bill, which Congress did in Section 320 of P.L. 106-291, the Department of the Interior and Related Agencies Appropriations Act of 2001. Although committee composition remained essentially the same as it had been in the original draft of HR 2389, missing from the enacted legislation were the requirements that recommendations must be "at or above" the temporary payment levels and that the committee seek methods for maximizing revenues from federal lands.

Pursuant to its legislative charge to provide Congress and the six congressional committees of jurisdiction for the committee with alternatives and recommendations within 18 months, the committee held ten listening sessions around the country and submitted its report to Congress on February 6, 2003. The report detailed its findings about implementation of P.L. 106-393 and discussed a number of payment options. Chief among its recommendations was reauthorization of the Secure Rural Schools legislation (Forest Counties Payments Committee 2000). The committee also recommended that Congress:

- Retain payment levels established under the Secure Rural Schools Act (P.L. 106-393).
- Continue to make payments directly to States for counties adjacent to national

- forests.
- Provide statutory language prohibiting States from offsetting State education dollars with Federal forest payments.
- Future payments made to States and counties should not be subject to annual appropriations, and should be fixed at levels established under P.L. 106-393 for the first 10 years. Receipts collected from public lands should be used to reduce the total cost to the Treasury.
- Further study is needed to fully understand the costs to local governments associated with the presence of public lands.
- Allow more flexibility for local governments to spend the non-school portion of Federal payments.
- Title III should be continued under long-term legislation, and categories expanded to allow for expenditure of funds for non-reimbursed services provided to public lands by local governments.
- Long-term payment legislation should contain provisions for resource advisory committees.
- The Forest Service and the Bureau of Land Management should initiate regulations to clarify administrative questions to provide consistency for Titles II and III.
- Broaden membership categories to allow for participation by relevant local interests.
- Congress and the administration should consider designating additional funds from other sources for use by resource advisory committees, especially in those national forests and counties where available dollars for Title II projects are limited. (Forest Payments Committee,
- Monitoring of P.L. 106-393 needs to be undertaken.
- Revise the Forest Service Appeal Regulations to reward collaborative efforts.
- Congress should continue to address statutes, regulations, and policies that affect forest health.

The committee's authorization expired before the committee was able to fully examine the effects of the Secure Rural Schools act or to engage in formal discussions with Congress about its findings and recommendations. Thus, legislation to extend the terms of the committee for another four years was introduced in the House in October of 2003 by Representatives Greg Walden (R-OR) and Peter DeFazio (D-OR). It passed the House by voice vote on October 28. In the Senate, the Subcommittee on Public Lands and Forests held a hearing on March 10, 2004, and the following month, on April 28, the full committee on Energy and Natural Resources favorably reported the bill without amendment. Final Senate approval occurred on September 15, 2004, and was signed into law by the President on October 5 (P.L. 108-319).

In September of 2005 the committee produced another report, which showed payment data and revisited some of the recommendations made in its 2003 report.

### ***Reauthorization***

Legislation to reauthorize and extend the act until 2013 was introduced in the House on February 2, 2005, by Representative Walden (HR 571) and 39 co-sponsors, and

on the same day in the Senate by Senator Craig and 14 cosponsors (S 267). The two bills are exactly the same. An oversight hearing on the 2000 act was held on February 8 in the Senate's Energy and Natural Resources Subcommittee on Public Lands and Forests. A month later, on March 8, the same subcommittee held a hearing on the reauthorization legislation.

Widespread support for the legislation was expressed at the hearings. Not surprisingly, two county superintendents who are members of RACs, one of whom sits on the Forest Counties Payments Committee, spoke of the benefits of the legislation. Evidence was also presented by former skeptics about the act's successes. The Wilderness Society, for example, testified that the legislation had met its defined goals, had resulted in beneficial and non-controversial projects on the national forests, and had successfully brought divergent community members together. It supported reauthorization if no major changes were made to the original legislation. It therefore expressed concerns that the reauthorization bill would make the merchantable material program discretionary, only allowing a pilot program to be established in response from a request from a RAC. Another environmental group member from the Oregon Natural Resources Council, who sits on two Oregon RACs, also testified in favor of reauthorization (U.S. Senate 2005b).

A statement that Mark Rey, Agriculture Undersecretary for Natural Resources and the Environment, made to reporters following the February 8 oversight hearing received widespread attention (Berman 2005). Rey indicated that it would be difficult to fully fund the program given the federal deficit. During his testimony he had praised the act, but he had not addressed the funding issue, although he had pointed out that the payments were generally higher under the act than under the 25% system. The following month, during the March 8 hearing, both Rey and Chris Kearney, Deputy Assistant Secretary for Policy and International Affairs in the Department of the Administration, stated the administration's position that it could support the reauthorization legislation "if amended with agreed upon savings that fully offset the cost of the bill in FY 2007 and beyond...." (U.S. Senate 2005b, p. 8).

While figuring out how to fund the 2000 act was not without controversy, the 2000 act was passed in an era of budget surplus. The current situation is one of budget deficit. As reauthorization moves forward, getting into the President's budget proposal will be critical as will action by the congressional budget committees. Budgeteers will need to find some way of funding reauthorization, and the opportunities are limited. Some might look to agency budgets, but the funding required is simply too large for the agency budgets to absorb. Although there are some within the schools coalition that want to focus on receipts and use the budget situation as an incentive to push for recoupling and increased timber production, there are still others in the coalition that just want the dollars, and it will be essential to keep the coalition intact. Recoupling would also likely lose the environmental support that has thus far been generated and reenergize environmental opposition. Finally, some have suggested that there may be other receipts that can be tapped, such as receipts from mineral resources bonus bids, or unused funds in non resource-related programs, e.g., rural development dollars for Iraq. The 2007 Budget Resolution will need to decide whether the dollars are scored against programs emerging from the House Resources Committee or the House Agriculture Committee. This will make a significant difference because in 2007 the Agriculture Committee will

be taking up another farm bill whose popular programs would compete with funds needed for the reauthorization measure. Finding the dollars to fund the program will undoubtedly be the most controversial issue during the reauthorization process.

The challenge of funding the program could involve addressing the formula upon which the 2000 funding is distributed. Changing the formula could, for example, lower overall program costs. Reopening the formula, however, also provides opportunities for states with powerful congressional delegations to argue for a new formula that would give their states more funding. Reopening the formula also increases the potential for creating an east-west division over dollars. There is certainly recognition by other states and the Republican administration that Senator Wyden's state of Oregon – a blue (Kerry) state in the last presidential election – gets a sizeable share of the total dollars. The senator, however, is not likely to yield funding for his counties easily. Tinkering with the formula is about power and politics, as well as the purse.

Another concern that the administration expressed in its House testimony on reauthorization concerned Title III accountability. Both the Department of the Interior and the Department of Agriculture opposed as unworkable the proposed reauthorization requirement that the respective secretaries monitor and report on the use of Title III funds. The Department of the Treasury had told the departments that it didn't have the capacity to do the annual auditing. The departments also pointed out that U.S. government auditors showing up at the counties' doors would not be well received. Instead the administration stated that it preferred to have Title III funds subject to "review and approval" of a RAC (U.S. Senate 2005b, March 8, p. 18). However, during the final Senate debate on the 2000 act, a colloquy between Baucus, Wyden, and Senator Barbara Boxer (D-CA) addressed the role of an advisory committee in terms of Title III. These Democratic senators made it clear that, for them, the roles of the RAC committees in terms of Title III were to be advisory only, and that "counties are to have full discretion to spend title III funds for the purposes enumerated under title III without any restrictions or limitations placed upon them by the Resource Advisory Committees" (Congressional Record 2000, S 8523). Unlike Title II, Title III projects, Senator Baucus insisted, "are not in any sense 'federal' projects" (Congressional Record 2000, S 8524).

Despite the challenges facing renewal of the Secure Rural School and Community Self-Determination Act, especially in the current budget climate, there is a fairly strong push to keep substantive changes relatively simple. The more changes, the more likelihood that the formula for funding comes into play, which, as noted above, triggers major negotiations. Because of the budget situation, changes in congressional committee assignments since 1999-2000, and subtle divisions within the schools coalition, the more issues put on the table the less certain the outcomes could be. Right now there appears to be consensus in favor of taking the least risky path.

The House Resources Committee passed the reauthorization legislation out of committee under unanimous consent and without amendment on May 18, 2005. The Senate has not acted, and current prospects are that nothing will happen until the 2007 budget resolution is negotiated, and the deadline for action is more pressing.

## Chapter 2