INDUSTRIAL DEVELOPMENT BOARD
OF THE CITY OF NEW ORLEANS, LOUISIANA, INC.

PAYMENT IN LIEU OF TAX (PILOT)
POLICIES & PROCEDURES
(approved March 12, 2025)

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The Industrial Development Board of the City of New Orleans, Louisiana, Inc. (hereinafter, the "IDB") was originally incorporated in 1973 pursuant to La. R.S. 51:1151, *et seq.*, and a resolution adopted by the New Orleans City Council. The IDB is a public nonprofit corporation and instrumentality of the City of New Orleans, and is governed by a board of directors consisting of fifteen members. Each of the seven members of the City Council names two persons to the board of directors, and the Mayor names one person; all appointments are then formalized by a motion of the City Council. IDB Directors serve for overlapping six-year terms.

In Louisiana, the primary tools that are available for local economic development agencies such as the IDB have included taxable and tax-exempt private activity bonds, Payment-in-Lieu-of-Tax (PILOT) arrangements and, to a very limited extent, Tax Increment Financing (TIF).

In the case of the IDB, tax-exempt bonds would most likely be used only for small manufacturing plants, apartments projects that include certain minimum number of affordable or subsidized units, and certain kinds of projects for 501(c)(3) non-profit entities. Other kinds of projects may be eligible to use tax-exempt bonds under federal law and regulations, but in New Orleans the foregoing three categories are the ones most likely to be applicable.

TIF financings generally originate with the local parish or municipal governing authority, but in some cases a local IDB may have a role to play.

This document focuses on PILOTs, which is the most common incentive used by the IDB in recent years as an incentive to project developers.

WHAT IS PAYMENT IN LIEU OF TAX (PILOT)?

When a PILOT structure is utilized, the IDB and project owner (often referred to as the "Developer") negotiate a contractual "payment in lieu of taxes" (PILOT) that may be equal to, but is usually less than the full amount of property taxes that would by owing if the Developer's proposed project was on the tax rolls. This reduced tax payment, a form of tax abatement, is a financial incentive for projects, and can be utilized in a range of circumstances and for almost any kind of commercial project, as well as for some residential apartment projects. Although PILOTs were traditionally used in conjunction with the issuance by the IDB of bonds, more recent practice allows a PILOT structure <u>without</u> the use of a bond issue.

Essentially, by reducing the project owner's annual tax liability, additional cashflow is created that can make a marginal project economically feasible or allow an even larger development to be financed that might otherwise be possible without the PILOT incentive.

PILOTs may be entered into for other reasons as well, as further described in these Policies and Procedures.

The legal basis for the use of PILOT by the IDB can be found in La. R.S. 51:1160. Because Louisiana law does not allow local governments to waive or abate property taxes simply by contract, the important feature of any PILOT structure is that the tax exemption is created by transferring the actual ownership of the property subject to the PILOT to a tax-exempt governmental entity. The governmental entity might be a political subdivision such as a parish, municipality, or port commission, an industrial development board such as the IDB, or a public trust.

In a typical PILOT transaction, simultaneously with the transfer of ownership the tax-exempt entity will lease the property back to the Developer pursuant to a PILOT Lease that is essentially a "triple-net" lease. Under the PILOT Lease, the Developer will be responsible for paying all expenses of operating, maintaining, and insuring the Project, as well as paying rent consisting of IDB Administrative Fees and PILOT payments, bond debt service (if any), plus any other taxes that m might be due (such as sales taxes on construction materials). At the end of the agreed-upon PILOT term, the Developer has an option to purchase the property from the IDB for a nominal amount, usually $1,000, after which time the project would return to the tax rolls and be taxed at the then-current millage rate.

REASONS THAT PILOT MAY BE UTILIZED; CONSIDERATIONS AND ISSUES

PILOTs have been used by the IDB and similar economic development organizations for many kinds of projects and for many reasons. In all cases, the IDB examines whether the term and amount of the PILOT are reasonable considering the benefits that the project may generate for the City of New Orleans. For all kinds of PILOTs, several basic, threshold questions must be addressed by the applicant and considered by the IDB:

Are the term and amount of the requested PILOT reasonable?

Are other incentives also being utilized?

How does the project benefit the community and other businesses in the community?

Do the community benefits equal or exceed the "costs" of the PILOT in the form of foregone tax revenues, not only to the City but to other taxing bodies such as public schools, sheriff, downtown development district, levee districts, etc.?

Does the project also address nonfinancial policy goals of the community such as affordable housing, removal of blight, or significant creation or retention of jobs?

Is the project the kind of project that would even be subject to local property taxes but for some feather of a public-private partnership (usually the use of some tax-credit program as a source of construction) that requires private ownership of a project that would normally be publicly owned and exempt from property taxes altogether.

Over the years, PILOTs have been used for many different reasons, and can be structured in different ways that address the specific needs of each project. In each case, the basic questions listed above must be addressed, but certain kinds of PILOTs also may raise additional issues. PILOTs may be requested and structured for one or more of the following reasons:

- To provide a property tax abatement/reduction purely as an incentive to attract or retain business.

  Issues: What alternative incentives are being offered by other localities and why is a PILOT needed to bring the Project to New Orleans rather than the Project being located in some other locality? If the PILOT is for business retention, how must New Orleans compete with other alternative sites in order to retain and/or grow businesses and employment in New Orleans, and what would be the impact if the business in question left New Orleans?

- To be integrated with the State's 10-year Industrial Tax Exemption Program ("ITEP") to provide a longer period of tax reduction/abatement than would be available through ITEP.

  Issues: How does New Orleans benefit from the project and are the benefits justified by the revenues foregone as a result of the PILOT arrangement? Why does the Developer need more than 10 years of property tax reductions to make the project financially viable? Are the reductions provided by ITEP in years 1-10 still reasonable and justified to be continued in Year 11 and thereafter?

- To be used in lieu of ITEP to provide a longer incentive period but with greater income to local taxing bodies during the first 10 years when they would otherwise be receiving little additional tax revenues from the project under ITEP.

  Issues: Are the benefits of having local taxing bodies receive more than the usual 20% payment under ITEP in years 1 -10[1] sufficient to justify the foregone tax revenues after year 10?

- To provide cash flow relief to new or start-up businesses during their initial phases of operations.

  Issues: How long is the "startup window" when a project may need assistance as their operations ramp up, and how much property tax relief, through the PILOT, is needed to make such a project financially viable through this startup period? Can a PILOT be structured with declining subsidies in later years while still addressing projected shortfalls during a startup period? Can the applicant document, through use of financial proformas, the projected revenue shortfalls in the early years of operation?

- As a tool to reimburse project developers for public infrastructure expenses that otherwise might not be affordable for local governments but are needed to attract or retain business.

[1] As of 2024, ITEP provides for an 80% reduction in local property taxes for ten years. The project beneficiary therefore makes an ITEP payment of 20% of the amount of taxes otherwise due. Terms of ITEP are subject to change from time to time.

Issues: Sometimes a new project requires additional public infrastructure in the form of utilities, or improved road/transportation access that local governments cannot afford to build; in such a case, a company may be willing to pay for the improvements itself provided that the investment can be reimbursed from tax savings in future years. The IDB would ask what public infrastructure is needed and why are local governments unable to make the investment in such public infrastructure themselves? Will the infrastructure also benefit neighboring properties or the City as a whole? What is the appropriate window for using PILOT as a tool to reimburse the Developer for initially paying for the infrastructure themselves?

- As a tool for creating a public/private partnership through a cooperative endeavor agreement whereby PILOT payments are redirected or leveraged into other economic development projects or for financing necessary infrastructure and/or site improvements. For example, a private developer of a hotel or conference center might enter into an agreement whereby its PILOT is directed to the municipality, which can then leverage that income stream to pay for an adjacent parking lot or other needed infrastructure.

  Issues: What specific projects or infrastructure improvements are being financed? How do they relate to the project itself or are they improvements that benefit neighboring properties or the City in general more than the project itself? What are public entities contributing in the form of public funding, tax revenues through a TIF, or similar sources? Are the overall benefits sufficient to justify the amount and term for which property tax revenues would be reduced by the PILOT?

- A specific kind of public/private partnership that can benefit from the use of a PILOT is one whereby state or federal tax credits may be available to what would ordinarily be a public project not subject to property taxes. In these cases, the tax credits may only work if there is private investment and private ownership of what would otherwise be public/exempt property. The private investment/ownership may have an unintended consequence of subjecting the project to property taxes, which a PILOT can be used to mitigate.

  Issues: Since these projects generally consist of properties that would not ordinarily be subject to local property taxes (typically public schools, charter schools, or public housing), many of the issues that are relevant for a private, commercial project do not apply. In fact, federal regulations may actually preclude the implementation of the IDB's usual employment goals or preferences when tax credits are being utilized.

- As a vehicle for project developers to obtain certainty regarding the amount of future tax payments, which may be necessary in order to secure financing.

  Issues: Is the project the kind of project that does not lend itself to accurate projections of what the assessed value & taxes will be upon completion? Usually these factors are at play with low-income or subsidized housing where an "income approach" to assessments may be utilized rather than the fair market value of the project; however local assessors may not be able to use the income approach until at least a full year of financial operations can be analyzed. Does the lender or investor in these cases require greater certainty as to the property tax/PILOT expense of a project in order to commit to making the loan or investment needed to finance the project" Would the fair market value approach in the first year or two of operations result in taxes that are significantly higher than what would be expected with the income approach? In some cases, an applicant may not be seeking any kind of material subsidy but is only looking for certainty as to the amount of property taxes that the project will have to support, and can justify the anticipated PILOT payment by reference to similar projects.

- As a way for local governments to also secure assurances about minimum jobs, payroll and/or preference for local or minority/disadvantaged businesses.

  Issues: Is the project the kind of project that would be expected to utilize local construction workers, local permanent workers, or MBE/DBEs without some incentive for doing so?

- As a way for local governments to encourage the development of projects that meet critical local policy priorities, such as the development of affordable housing, elimination of blighted areas, use of local and disadvantaged businesses during construction, elimination of "food deserts," and retention of existing businesses.

  Issues: Is the project the kind of project that does address one of the critical policy concerns enumerated above, or another one that addresses a compelling public policy issue, but would not be financially viable without a public incentive such as PILOT?

GUIDELINES AND PARAMETERS

In part, these PILOT Policies and Procedures are intended to address recommendations by the Government Finance Officers Association (GFOA) with regard to best practices in connection with "Establishing an Economic Development Incentive Policy" by the IDB. As can be seen from the above discussion of numerous different kinds of PILOT structures, there simply is not any one formula or set of criteria that applies to every application. In the words of the GFOA, PILOT incentives may ". . .need to be evaluated and tailored on a case-by case basis." GFOA also recognizes that an economic development incentive policy:

> ". . .needs to be specific enough to establish clear boundaries but not overly restrictive in order to allow for flexibility and discretion to ensure that the policy serves the best interest of a jurisdiction. As such a policy should avoid specific details for assessing project proposals but rather focus on broader decision-making criteria and processes. Furthermore, jurisdictions should also develop and adopt detailed procedures that complement the policy and provide guidance on the administrative implementation of economic development incentive."

The creation of new jobs and the retention of existing jobs have always been a linchpin of economic development incentive programs. However, the IDB recognizes that different kinds of projects create different kinds of jobs and numbers of jobs, so there is no simple formula to determine if a project should qualify for a PILOT simply by reference to some number of jobs compared to some amount of capital investment. For example, a large manufacturing facility may create a relatively small number of high-paying jobs, while a hotel or retail project costing the same amount to build may create many a greater number of lower-paying jobs. An affordable housing project may create only a handful of permanent jobs while addressing the City's shortage of affordable housing units. Conversely, a market-rate housing project may also create only a handful of permanent jobs, while not addressing the shortage of affordable housing, but may offset these factors by virtue of eliminating urban blight and providing a catalyst for further neighborhood development (for example, the South Market neighborhood in the CBD). Some projects "tick all the boxes" by providing a large number of jobs, generating sales tax revenues, eliminating blighted property or putting abandoned properties back in commerce, resulting in neighborhood infrastructure improvements, and stimulating growth in neighboring areas.

Although the basic questions listed at the beginning of the foregoing section may apply to all projects, the category or type of PILOT being requested will call for additional analysis depending on the specific situation. There is no completely objective, mathematical formula that would result in a definite "yes" or "no" response to a PILOT application. The IDB's policy always has been, and will continue to be that its individual directors will reach an informed and considered conclusion about each PILOT application through the use of the criteria outlined above, the consultant reports discussed below, input from elected officials and other economic development organizations, input from the public at open meetings held by the IDB, the results of PILOTs used in past projects, and from their own experience as members of the business community in New Orleans.

APPLICATION REQUIREMENTS

Developers that are interested in structuring a PILOT through the IDB are encouraged initially to contact the IDB Administrator to discuss the application process and to obtain application materials. The IDB may be contacted as follows:

Mailing Address: P.O. Box 19996 New Orleans, LA 70179
Physical Address: 1340 Poydras Street, Suite 1114 New Orleans, LA 70112
Telephone: (504) 658-4242
Email: mail@idbcno.com

Additional information about the IDB, the PILOT Process, and the location of past PILOT projects may be viewed on the IDB's web pages located at the following URL:

https://nola.gov/next/economic-development/topics/industrial-development-board/

The Board of Directors of the IDB generally meets monthly on the 2nd Wednesday of each month at 12:00 noon. In order to ensure prompt consideration of a PILOT application, and to allow the IDB sufficient time to notify Board Members, taxing body representatives and other interested parties, the IDB requires that developer submit their initial PILOT application at least three (3) weeks prior to the next scheduled IDB meeting.

An application fee of $3,000 is required upon submission of a PILOT Application.

STEPS IN THE PILOT APPROVAL PROCESS

A detailed flowchart showing all steps that will take place during the approval process for PILOT applications should be carefully reviewed by all prospective applicants. The flowchart is intended, in part, to implement GFOA recommendations that the IDB should articulate an evaluation process and also ". . .develop and adopt detailed procedures that complement the policy and provide guidance on the administrative implementation of economic development incentives." The flowchart is available at the following URL:

https://nola.gov/nola/media/Economic-Development/Public%20Notices/E3-IDB-PILOT-Flowchart-(1).pdf

Applicants are urged to carefully review the foregoing flowchart and to direct any questions about the application and approval process to the IDB at the address given above.

EMPLOYMENT GOALS FOR ALL PILOT APPLICATIONS

For many years, the IDB has utilized its PILOT program to encourage local businesses and investors to utilize Orleans Parish workers in the construction and operation of projects, and also to encourage the use of local minority and disadvantaged business enterprises. Detailed information about the applicability and implementation of these goals is available at the following URL:

https://nola.gov/nola/media/Economic-Development/Public%20Notices/Standards-for-Meeting-Employment-Goals-5-10-22.pdf

Applicants are urged to carefully review the foregoing standards and to direct any questions about the implementation of these employment goals during the application process to the IDB at the address given above. Failure of any Developer to comply with agreed-upon employment goals may result in the assessment of clawback penalty payments under the terms of the PILOT Lease.

In some cases, the IDB may recognize that its usual employment goals cannot be met. For example, certain projects involve specialized construction materials or methods for which there are no local or regional MBE/DBEs who can do the work. In such cases, the IDB will work with Developers to identify alternative commitments that will address the IDB's policy goals, perhaps through the provision of of job-training opportunities, or commitments to use local MBE/DBEs to provide more service-oriented services.

IDB CONSULTANT REPORTS
FOR PILOT APPLICATIONS; EXCEPTIONS

In most cases, prior to its final consideration of a PILOT application the IDB engages outside consultants to prepare a "Cost-Benefit Analysis" and a "But For Report." The purposes of these reports are explained in detail below. The cost of preparing these reports generally will be in the neighborhood of $15,000, and the cost of these reports is initially borne by the IDB. Should a PILOT application proceed to a fully executed PILOT Lease, then the Developer will be expected to reimburse the IDB for the upfront cost of the reports, by an annual payment payable at closing or over the term of the PILOT, in addition to the usual IDB Closing and Annual Administrative Fees.

As discussed above, a specific kind of public/private partnership that can benefit from the use of a PILOT is one whereby state or federal tax credits may be available to what would ordinarily be a public project, but only if there is some private investment and private ownership. The private investment/ownership may have an unintended consequence of subjecting the project to local property taxes, which a PILOT can be used to mitigate. In the case of such projects consisting of public schools, charter schools, or public housing, a PILOT may be necessary to offset the unintended tax consequences of the private ownership needed to qualify for tax credits. In these cases, the IDB may recognize that the project would otherwise be publicly-owned and exempt from property taxes; therefore, there is little or no actual financial impact to local taxing bodies from the use of this kind of PILOT since these projects would not even be on the tax rolls except for the private ownership feature that is necessitated by the use of tax credits. Consequently, in these cases the IDB may elect to waive the requirement of obtaining the Cost-Benefit Analysis and/or the But For Report.

Another circumstance when the IDB might elect to waive the requirement of obtaining the Cost-Benefit Analysis and/or the But For Report would be in the case of a project where the IDB PILOT is just one part of a larger incentive package from other governmental entities such as the State of Louisiana or the City of New Orleans. In such cases, the community benefits of the benefits package as a whole will already have been vetted by state and/or local governments, and additional review of the benefits through the usual IDB consultant reviews may be deemed to be unnecessary.

COST-BENEFIT ANALYSIS (CBA)

A Cost-Benefit Analysis (CBA) has for many years been prepared for the IDB by an outside economist in connection with most PILOT applications. The purpose of the CBA is to quantify the "cost" to local taxing bodies of any proposed PILOT, when the PILOT is less than the full amount of taxes otherwise payable on some project; and then to compare the cost of the PILOT to the benefits that the community can expect to receive from the project.

The CBA may recognize that certain benefits can be measured - for example the expected sales tax revenues from construction materials and commercial activity generated by a project upon its completion. At the same time, the CBA may recognize that other benefits, while also important, may be intangible and more difficult to assign a specific monetary value to - such as the benefits accruing from the construction of additional affordable housing units, the redevelopment of blighted property and neighborhoods, or the benefits achieved by IDB-imposed goals for Orleans Parish Workers and MBE/DBE participation.

The CBA generally makes the basic assumption that without the PILOT terms proposed by a developer the proposed project would not be constructed AND that there would be no alternative or future development at the same location. The CBA is not designed to address whether or not on a purely financial basis the project could proceed without a PILOT, since that question is meant to be addressed by the separate report that is discussed below.

Given those basic assumptions, the CBA will examine the cost of the PILOT as proposed by the applicant (based on property tax projections from the Orleans Parish Assessor's Office), as well as any quantifiable community benefits such as (a) anticipated sales tax revenues during construction and after completion, (b) additional property tax revenues from the PILOT as well as after the conclusion of the PILOT arrangement when the property is back on the tax rolls, (c) new jobs and payroll created by the project, including any multiplier effects calculated using generally accepted econometric principles.

The CBA may also address the intangible factors mentioned above, such as affordable housing benefits, removal of blight, use of local workers, and use of MBE/DBE contractors and vendors. The CBA may address any of the underlying assumptions of the application that the author feels are unreasonable or which appear to be outside of the norms, but otherwise it is expected that the CBA will take most of the assumptions made in the PILOT application at face value.

BUT-FOR REPORT (BFR)

The But For Report (BFR) is also prepared by an outside consultant selected by the IDB in connection with most PILOT applications. The BFR report is intended to address only the following question: "From a strictly financial standpoint, and for a typical project lender or equity investor, would this project be financially feasible under current market conditions <u>without the subsidy offered by a reduced-payment PILOT</u>?"

The BFR will focus on the financial aspects of the PILOT proposal, leaving any in-depth review of the costs and benefits of the proposal to be covered by the CBA. In that regard, the BFR will review the financial projections and pro formas for the project over a window of at least 10 years (or the proposed term of PILOT, whichever is longer).

From the standpoint of a lender that is likely to be used for the sort of project being proposed, the BFR will examine anticipated revenues and expenditures, cashflows, debt service requirements and coverage ratios, and should (if possible) reach a conclusion about whether the PILOT subsidy is actually needed to make the project financing available on commercially reasonable terms. This conclusion may be based on coverage ratios or any other standard that the analyst deems appropriate.

With respect to equity investors, the BFR will address essentially the same questions as it addresses with respect to potential lending partners, and (if possible) reach a conclusion about whether equity investments could be secured on commercially reasonable terms without the subsidy offered by the reduced-payment PILOT.

At its conclusion, the BFR is expected to express the analyst's opinion that either:

1. The project would most likely not be possible without the requested PILOT,
2. The project would most likely not be possible without some PILOT but not necessarily as much of a PILOT subsidy as has been requested, and/or

3. The project most likely does NOT require a PILOT in order to be attractive to prospective lenders or investors on commercially reasonable terms.

The BFR may also conclude that a requested PILOT is necessary for some but not all of the proposed term, that a lesser PILOT subsidy would be enough, or that the amount of PILOT subsidy to make the project financially feasible may decrease or increase over time.

WHAT TO EXPECT AFTER A PILOT HAS BEEN APPROVED

Once the IDB has completed its review of a PILOT application and given its final approval to the PILOT and all of its underlying terms and conditions, the IDB and Developer will enter into a PILOT Lease that incorporates all of these terms.

If the project is already complete and in service (or ready to be placed in service) at the time the PILOT Lease is signed, then the project will be conveyed to the IDB immediately and leased back to the Developer pursuant to the PILOT Lease. If the project is yet to be constructed (which is the more common situation), then the Developer will undertake the construction and will notify the IDB when the project is complete, a certificate of occupancy has been secured, and the project is ready to be placed in service and conveyed to the IDB.

During the construction period, the Developer is responsible for securing all necessary servitudes, zoning, permits, inspections and waivers, and for paying sales tax on all construction materials, as well as providing for the financing of the project. Also during the construction period, the Developer will be expected to provide quarterly progress reports to the IDB describing their efforts to comply with any required employment goals.

After a project has been conveyed to the IDB and is being leased back by the Developer under the PILOT Lease, the Developer will be responsible for paying all maintenance, upkeep and insurance expenses of the project, for maintaining the project in good condition, for indemnifying the IDB and its directors and staff from any expenses and/or liability arising from the IDB's ownership of the project, and for complying with all the terms of the PILOT Lease.

An annual report to the IDB will be required from each Developer, using a form furnished by the IDB that details compliance with the PILOT Lease, especially any jobs/payroll commitments, and providing updated insurance certificates. The Developer will also be obliged to calculate the annual "savings" that the PILOT creates and to report same to the IDB so that the IDB can assist local taxing authorities with compliance with GASB Statement No. 77 regarding the costs of tax incentives.

NON-COMPLIANCE WITH ANY TERMS OF THE PILOT LEASE MAY RESULT IN THE IMPOSITION OF SUCH CONTRACTUAL CLAWBACK OR PENALTY PAYMENTS AS MAY BE SET OUT IN THE PILOT LEASE, OR IN SOME CASES MAY RESULT IN THE PILOT LEASE BEING TERMINATED AND OWNERSHIP OF THE PROJECT BEING RETURNED TO THE DEVELOPER AND THE PROJECT BECOMING SUBJECT TO FULL LOCAL PROPERTY TAXES.

Each Developer will also make an annual administrative fee payment to the IDB in the amount set forth in the PILOT Lease. Typically, the annual administrative fee will be the lesser of (a) 1/20 of 1% of the actual capital cost of the entire project upon completion or (b) 1/20 of 1% of the fair market value of the entire project as determined by the Orleans Parish Assessor.

During the term of the PILOT, Developers will usually be able to claim depreciation on the Project, however each Developer must obtain independent advice from their own tax advisors about depreciation and other tax consequences that might arise from the PILOT Lease structure. The IDB makes no assurances or representations about the availability of depreciation, nor any other tax consequences, to or for developers under the PILOT Lease.

At the end of the PILOT term set out in the PILOT Lease, the Developer will have the option to repurchase the project "as is" from the IDB for a nominal sum, usually $1,000, plus the payment of any IDB expenses and/or legal fees related to the unwinding. The cost of recording any conveyances and releases must be paid by the Developer.

CONCLUSION

If there remain any additional questions not addressed by these Policies & Procedures, or by the other documents linked herein, please contact the IDB Administrator at the address given above. If necessary, the Administrator may direct such questions to IDB Special Counsel for further clarification or response.