

( ) **Agency:** Board of Commissioners of Public Lands  
Reimbursement for Administrative Costs

**Recommendations:**

**Paper No. 231:** Alternative 2 ✓

**Comments:** AG says the current statute mandating reimbursement for services is unconstitutional (see paragraph 7), so they need to be modified.

The question is, do we let the Board of Commissioners off scot-free for services rendered by other agencies (i.e. alternative 3), or do we try to fix the stats so they have to pay (i.e. Alternative 2).

I don't care which way you go, but it seems reasonable to make them pay for services - and Alternative 2 requires these bills to be pretty detailed (so they aren't getting ripped off).

prepared by: Barry



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

May 6, 1999

Joint Committee on Finance

Paper #231

### Reimbursements for Certain Administrative Services (Board of Commissioners of Public Lands)

[LFB 1999-01 Budget Summary: Page 110, #3]

#### CURRENT LAW

The dollar amounts in the appropriation schedule for the Board's general program operations constitute 90% of the funds deducted from the gross receipts of trust fund investments to support the agency's administrative functions. The remaining 10% deducted from the gross receipts of trust fund investments is credited to the general fund as reimbursement for indirect costs of state services that are provided to the Board.

#### GOVERNOR

Repeal the current law 90%/10% mechanism that provides reimbursement to the state for its indirect costs of services to the Board. Provide instead that the Board must reimburse the Department of Administration (DOA) from the Board's general program operations appropriation for administrative services provided by DOA and other state agencies. Provide increased expenditure authority of \$122,300 PR in 1999-00 and \$126,800 PR in 2000-01 in the Board's general program operations appropriation to fund these estimated reimbursement costs.

The Governor's intent is that these amounts be credited to the general fund as GPR-Earned. These amounts equal 10% of the total of all expenditures budgeted to the Board's general program operations appropriation. Compared to current law, this revised reimbursement computation mechanism would decrease total general fund collections by \$3,300 annually.

#### DISCUSSION POINTS

1. From 1991-92 through the end of the 1996-97 fiscal year, the Board was required to

lapse to the general fund each year an amount from the agency's general program operations appropriation. The purpose of the lapse was to reimburse the state for the indirect costs of administrative, budgeting and personnel services provided to the Board. DOA was required to apply its federal indirect cost reimbursement rate to the amount of the Board's total salary costs to determine the amount of the lapse. After the lapse, any remaining unencumbered funds in the Board's administrative appropriation reverted to the balances of the Common School Fund, the Normal School Fund, the University Fund and the Agricultural College Fund.

2. This annual reimbursement mechanism was originally proposed by the Governor for the 1991-92 fiscal year and was enacted as part of 1991 Wisconsin Act 269 (the 1991-93 budget adjustment act). During the next four fiscal years, the annual federal indirect cost reimbursement rate applied to determine the Board's annual lapse amount varied between 9.7% and 6.0%.

3. A subsequent review of this reimbursement procedure by the Joint Finance Committee during its deliberations on the 1997-99 biennial budget determined, however, that the required annual lapses to the general fund were not in fact being made by the Board. The Committee acted instead to establish a simplified reimbursement mechanism for the Board that would be less cumbersome to administer.

4. The approach chosen by the Committee was to apply to the Board the reimbursement mechanism applied to the PR-funded general program operations appropriations of the Commissioner of Insurance, the Public Service Commission and the Department of Regulation and Licensing. These agencies retain 90% of their program revenue receipts but are required to deposit the remaining 10% to the general fund to offset the cost of general state services provided to these agencies.

5. This revised mechanism was included in 1997 Wisconsin Act 27 and first applied to the Board's general program operations appropriations for the 1997-98 and 1998-99 fiscal years.

6. During the 1997-98 fiscal year, the general fund did receive \$48,400 from the Board's appropriation to cover its arrearages under the previous lapse mechanism for fiscal years 1993-94 through 1995-96. Also during that year, the Board's Executive Secretary requested a memorandum from the attorney in the Attorney General's Office that works with the agency regarding the new reimbursement mechanism established under Act 27.

7. In that memorandum, the attorney gave his opinion that the Act 27 reimbursement mechanism was unconstitutional. The memorandum indicated that that attorney reached this conclusion based on the fact that the trust funds administered by the Board are trusts established by the Wisconsin Constitution, which directs that interest and revenues from the trust funds be directed to the maintenance of schools, libraries and educational materials or the state university system. The writer went on to indicate that since the Act 27 reimbursement provision "is purportedly intended to require the payment of school and university funds to the general fund, for no particular purpose, it is clear that the provision amounts to an unconstitutional diversion of school trust funds."

8. Since the receipt of this memorandum, the Board has chosen not to make the required 10% lapse of funds to the general fund as required by statute.

9. It may be noted, however, that ss. 24.04, 24.09(1)(bm), 24.53 and 24.62(1) of the statutes all explicitly authorize the deduction of administrative-related expenses associated with land sales and exchanges, investigations of land claims and the management and operation of trust fund accounts from the appropriate sale revenues or investment income. These amounts are then credited to the Board's general program operations appropriation to support the costs of its activities.

10. While the memorandum stated the attorney's opinion that there was "no particular purpose" associated with lapsing of 10% of the Board's appropriation to the general fund, the statutory provisions cited above clearly allow for the charging of Board administrative costs including charges to the Board from other agencies, from either trust fund income or investment income.

11. Staff in the DOA Budget Office indicate that the language in the Governor's budget recommendation is intended to address the concerns raised in the memorandum. The proposed new statutory language is based on the premise that the administrative services provided by DOA and other agencies to the Board, if billed as operating costs to the Board, are deductible from gross revenue of the trust fund just like other administrative charges currently being paid by the Board from its general program operations account. A total of \$122,300 PR in 1999-00 and \$126,800 PR in 2000-01 would be provided under the Governor's recommendation for the Board to support these reimbursement payments.

12. Notwithstanding the Governor's proposed approach for recouping certain administrative services costs provided to the Board, the three members of the Board have advised the Secretary of DOA that they "continue to have concerns regarding the expenditure of school fund earnings in this [proposed] manner." The Board members have indicated further that they believe the proposed charges may be questionable, may not represent the actual costs of providing the services to the Board and may not be within the scope of the Board's constitutional mandate regarding the use of trust fund earnings.

13. If the Committee believes that the Board's concerns have merit and the agency should not be required to reimburse the general fund for certain overhead costs, then it could modify the Governor's recommendation by: (a) deleting the proposed statutory language specifying that the Board reimburse DOA for services provided by it and other by other state agencies; and (b) eliminating the \$122,300 PR in 1999-00 and \$126,800 PR in 2000-01 recommended by the Governor for payment of such reimbursement charges. Under this alternative, the proposed repeal of the current law 90%10% reimbursement mechanism applicable to the Board would be retained, resulting in the complete elimination of any reimbursement mechanism applicable to the Board's general program operations appropriation. This alternative would reduce estimated GPR-Earned revenues by \$122,300 in 1999-00 and \$126,800 in 2000-01.

14. However, if the Committee believes that any general administrative services provided by DOA and other state agencies to the Board do constitute legitimate costs that are chargeable to the Board as a part of the overall costs of management of its programs, then the Committee could approve the new reimbursement mechanism recommended by the Governor and appropriate the necessary funding for these payments. [Compared to the current law reimbursement

computation methodology, this change would result in a small reduction in total GPR-earned revenues of \$3,300 annually.]

15. The Committee could, however, under this approach, adopt two modifications to strengthen the operation of the proposed reimbursement procedure:

- First, since the advisory memorandum cited above asserted the attorney's opinion that trust fund monies were being diverted to the general fund "for no particular purpose," the Committee could modify the Governor's proposed language to include a requirement that DOA render an accounting of the specific charges for which reimbursement is being requested; and
- Second, since the proposed language does not specify that the amounts reimbursed are to be credited to the general fund, the Committee could include this clarifying language to make explicit that requirement.

**ALTERNATIVES**

1. Approve the Governor's recommendation establishing a revised mechanism for the Board of Commissioners of Public Lands to reimburse DOA for the cost of general administrative services provided by that agency and by other state agencies and providing increased expenditure authority of \$122,300 PR in 1999-00 and \$126,800 PR in 2000-01 to allow the Board to reimburse DOA for the costs of these services.

2. Modify the Governor's recommendation by: (a) requiring that that DOA render an accounting of the services for which reimbursement is being sought; and (b) clarifying that the amounts reimbursed are to be credited to the general fund.

3. Modify the Governor's recommendation by: (a) deleting the proposed statutory language specifying that the Board reimburse DOA for services provided by it and other state agencies; and (b) eliminating \$122,300 PR in 1999-00 and \$126,800 PR in 2000-01 recommended to pay for such reimbursement charges. *[This alternative would have the effect of retaining the Governor's repeal of the current law 90%10% reimbursement mechanism applicable to the Board. This repeal would eliminate any reimbursement mechanism applicable to the Board's general program operations appropriation and would reduce GPR-Earned revenues by \$122,300 in 1999-00 and \$126,800 in 2000-01.]*

<u>Alternative 3</u>	<u>GPR</u>	<u>PR</u>	<u>TOTAL</u>
1999-01 REVENUE (Change to Bill)	-\$249,100	\$0	-\$249,100
1999-01 FUNDING (Change to Bill)	\$0	-\$249,100	-\$249,100

Prepared by:

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	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
	BURKE	DECKER	JAUCH	MOORE	SHIBLSKI	PLACHE	COWLES	PANZER	ZGARD	PORTER	KAUFERT	ALBERS	DUFF	WARD	HUBER	RILEY

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