



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #165

### **Authorization to Purchase Land (Board of Commissioners of Public Lands)**

[LFB 2005-07 Budget Summary: Page 73, #4]

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#### **CURRENT LAW**

The Board of Commissioners of Public Lands (BCPL) is authorized to sell or exchange lands owned by any of its four trust funds. It is not authorized to purchase additional lands, either as additions to its trust lands holdings or under its statutory authority regarding investment of trust funds assets.

#### **GOVERNOR**

Expand the Board's investment powers by authorizing the investment of monies in any of the Board's trust funds in the purchase of land in this state. Provide that such purchases may only be made if the proposed purchase meets all of the following conditions: (1) the land to be purchased is within any applicable trust land consolidation area that has been approved by the BCPL; (2) the total acreage of public lands managed by the Board after such purchase would not exceed the total acreage managed on the effective date of the budget bill; and (3) the BCPL has determined that the proposed purchase will do one or more of the following: (a) improve the Board's timberland management activities; (b) address forest fragmentation issues; or (c) increase public access to the land.

Also, modify current law provisions regarding land sales by the Board to clarify that the Board may sell any parcel of land that it owns as a whole parcel (as well as subdivided parcels) and to newly provide that such sales may be transacted under a sealed bid process. Currently, the statutes permit sale only at public auction.

Further, create a requirement that the Board must make annual payments, which would be called payments in lieu of taxes, to the appropriate local governmental unit for any land that

Board purchases that was at the time of the purchase subject to assessment or levy of a real property tax and establish an appropriation funded from trust funds revenues to allow such payments. Specify that such payments shall be equal to \$0.74 per acre. Finally, provide for the establishment of an account within the normal school fund for the deposit of any proceeds from the sale of public lands which are required to be deposited in that fund and specify that monies in that account may be used only to invest in future land purchases or for costs associated with such purchases.

## **DISCUSSION POINTS**

1. The BCPL is established under the State Constitution and is responsible for the operation and administration of its four trust funds: the common school fund; the normal school fund; the university fund and the agricultural college fund. Under the Constitution, the common school fund and the university fund are also created and provision is made for the use of a portion of the monies available for the common school fund to be made available for the support and maintenance of academies and normal schools [universities]. The Legislature by statute has created two additional funds for this latter purpose: the normal school fund and the university fund.

2. The Board has the responsibility for administration of these trust funds and for the investment of the principals of these funds. Under the statutes, the Board is authorized to invest or loan the cash assets of these funds with the earnings (after deducting the Board's operating costs) from such loans or other investments to be distributed to the beneficiaries of these respective trust funds based on each fund's percentage of the total funds invested.

3. The University of Wisconsin is the designated beneficiary of the three of the four trust funds (the agricultural college fund, the university fund, and the normal school fund). The agricultural college fund and the university fund are very small and generate almost no interest earnings. The normal school fund is larger (cash assets of \$19.9 million at the end of 2003-04) and is the fund that holds the majority of the BCPL's land holdings. Interest earnings on this fund are distributed to the University of Wisconsin, which deposits the money as revenue to the general fund.

4. The designated beneficiary of the common school fund, which is much larger (cash assets of \$586.6 million at the end of 2003-04), are the public schools. By statute, interest earnings on the principal in the common school fund are used to provide aid to public schools in this state through an appropriation under the Department of Public Instruction for school library aids. The governing statutes for that appropriation provide that the amounts available from interest earnings shall be distributed on a per student basis to each of the state's school districts. The statutes further provide that each district is to use these funds for the purchase of instructional materials from the State Historical Society for use in teaching Wisconsin history and for the purchase of library books and other instructional materials for school libraries. For fiscal year 2003-04, a total of \$20,251,400 was transferred to the Department of Public Instruction for distribution to school districts as school library aids.

5. Under current law, the BCPL is authorized to invest the monies in its four trust funds in bonds or notes of the United States, certain securities issued by the United States related to farm loan programs, and bonds issued by: (a) the state; (b) any city, town, village, county or school district in this state; (c) any local exposition, professional football stadium, professional baseball park or cultural arts district in this state; and (d) any bonds issued by the University of Wisconsin Hospitals and Clinics Authority.

6. Further, the Board may sell any public lands owned by any of the Board's trust funds at public auction. The statutes also allow the BCPL to sell at the appraised value or to exchange for land of approximately equal value, lands that the BCPL owns which are needed for federal, state, county, city, village, town or school district use. Similar language also allows the Board to sell to or exchange land with Indian tribes in this state where the lands involved are located within or adjacent to the federally-recognized boundaries of Indian reservations in this state. Further, the Board may exchange part or all of any parcel of public lands for any other land of approximately equal value if the Board determines that the exchange will contribute to the consolidation or completion of a block of land, enhance conservation of lands or otherwise be in the public interest. Any land sales other than those enumerated above must be by public auction.

7. Under the State Constitution, the Board may not use trust fund monies to purchase additional lands for the purpose of adding to a fund's land holdings. Under the statutes governing the investment of trust fund monies to generate interest earnings for distribution to fund beneficiaries, the investment in land is not currently a permitted option. Under the bill, one of the statutory changes that would be made is to add the purchase of land to the list of investments in which the BCPL may invest the principals of the four trust funds.

8. The BCPL states that it seeks the authority to purchase land to be able to further invest in what it sees as its niche of hardwood sawtimber management, as well as to increase the efficiency of all of its land forestcrop management activities and to achieve a higher rate of return on its investments for the trust funds' beneficiaries.

9. In this regard, however, it should be noted that there is an important distinction between how different types of investment returns are handled with respect to the funds' beneficiaries. The State Constitution provides that the BCPL is established for "the sale of the school and university lands and for the investment of the funds arising therefrom." The original principal of the normal school fund came from certain swamp land grants and monies conveyed to the state by a 1850 Act of Congress and initially placed in the common school fund. One-half of these lands and monies were transferred by statutory enactment to a separate fund denominated the normal school fund that was, pursuant to the State Constitution, established as a separate and perpetual fund. The statute further provides that all monies subsequently received on the account of the capital of such fund are a part of the fund.

10. The normal school fund is established for the support and maintenance of state colleges, and suitable libraries and apparatus therefore. Under current law, the interest earnings on this fund (which come from investment of the fund principal in loans to school districts and

municipalities and investment in state bonds such as bonds for the veterans home loan program), net of the fund's share of BCPL operating costs, are distributed to the University of Wisconsin. While the land holdings of the trust fund have asset value (land that could be sold and will presumably increase in value over time and would be converted to additional cash in the fund if sold), the land does not generate immediate interest earnings. In contrast, if land is sold, the monies from the land sales become cash assets in the fund that can immediately be invested and begin generating interest income for the trust fund beneficiaries.

11. In its request for the 2003-05 biennial budget, the BCPL requested that the list of areas in which it is permitted to invest the assets of the four trusts be expanded to include investment in land in this state. The statement of intent that accompanied this request indicated that this provision would allow the BCPL to make selective land purchases that would permit more efficient consolidation of its land holdings. It was further indicated that other benefits would be increased revenues from timber sales [which BCPL adds to the trust fund principals rather than treating as earnings], improved management of timberlands, and better access to existing BCPL lands.

12. The requested language was identical to language that the BCPL requested as a part of its 2001-03 biennial budget request. In 2001-03, however, the language was not included in the Governor's budget recommendations.

13. The language as requested by the Board in its 2003-05 budget request was included in the Governor's recommended 2003-05 budget, but with added limitations that no such purchases could be made unless the Governor requested that the Board purchase the specific land and the Board determined that the proposed purchase would reduce the per acre costs incurred in managing the public lands owned by the trusts and all other lands managed by the Board. The Joint Committee on Finance did not approve the inclusion of this new investment authority in the 2003-05 budget.

14. The BCPL has developed a position statement that provides information regarding its current request for statutory changes. The policy goals are expressed in a concept paper entitled "The BCPL Land Bank." The Board formally adopted the BCPL Land Bank proposal document on April 14, 2005. The BCPL indicates that it views the requested statutory change as being an extension of the Board's existing authority to exchange land owned by the trusts funds for other land of approximate equal value. It envisions the operation as being a land bank where existing owned lands would, in effect, be "exchanged" for new lands by "banking" the monies received from the sale of existing lands until being used to purchase new lands in what the Board has established as a nine-county land consolidation plan or "target area" for continued long-term BCPL land holdings.

15. As a part of its budget proposal, BCPL envisions the land bank operating as follows. The BCPL would conduct periodic sales of those lands it determines should be sold. Revenues from these sales would then be placed in a separate account (the "bank") within the fund to be used when lands in the target area that fit BCPL's acquisition criteria become available for purchase. Among the acquisition criteria to be used would be lands that BCPL believes should be targeted for

long-term ownership and that would help to consolidate existing blocks of productive timberland that BCPL already owns. BCPL has further indicated its expectation that the overall transactional effects of the selling of non-target area land and purchasing land in the target area would result in a net decrease in the amount of its total land holdings.

16. Under the proposed language, these actions are to be taken in accordance with any land consolidation plan adopted by Board. The summary of the current consolidation plan as formally adopted by the Board on July 10, 2003, contained three stated consolidation plan goals: (a) the BCPL will sell all of its holdings (identified at that time as totaling 10,000 acres) in 32 counties outside the target area and an additional 4,000 acres in scattered isolated tracts in its nine-county, long-term ownership region [target area] and will use the proceeds from the sales to purchase lands adjacent to and within its tracts in the nine-county region where long-term ownership is desirable; (b) the BCPL will exchange approximately 7,500 acres with the U.S. Forest Service, counties and private landowners to enhance blocking and access; and (c) the BCPL will attempt to purchase approximately 25,000 acres of property from willing sellers to consolidate existing properties. It should be noted that since the adoption of that plan in July of 2003, the BCPL has further reduced its holdings in non-target area counties so that its current non-target area holdings total only 8,694 acres in the now 25 non-target area counties.

17. The resolution formally adopting the land consolidation plan developed by BCPL staff stated that the Board "supports the plan to consolidate the Board's land holdings in the nine-county [target] area in northern Wisconsin pending receiving legislative authority to purchase Wisconsin timberland as an investment." The preamble to the resolution noted that the staff had developed a plan for consolidation of the Board's land holdings in the nine-county target area where most the Board's land holdings are already located. It was further noted that under the plan, it is envisioned that the Board's ability to efficiently manage its land holdings will be enhanced as a result of concentrating its owned lands in a smaller geographic area of adjoining parcels and by divesting those widely scattered parcels in other areas of the state that cannot be as effectively managed. Lastly, it was noted that the plan would entail the selling and/or trading of approximately 14,000 acres of scattered and less productive trust lands and the purchase under the requested new statutory authority of additional specific lands within the target area that are in accordance with the consolidation plan.

18. The BCPL has indicated that one of the goals of the consolidation plan is to improve its timberland management. The Executive Secretary of the Board has noted that the intent of the plan is to: (a) dispose of isolated parcels of land in the non-target area; and (b) reinvest those land sale proceeds into the purchase of additional lands that become available within the consolidation zone that will provide access to currently land-locked parcels (areas where BCPL does not have open access to the land). Both of these types of actions would be intended to result in increased management efficiency and productivity.

19. BCPL indicates that some of the other benefits that are expected to occur under the consolidation plan are: (a) forest industry partners, especially logging companies, will realize reduced production costs per acre through having access to larger timber tracts managed by BCPL;

(b) BCPL's land management activities will be enhanced through a reduction in costs; (c) the process of forest fragmentation will be mitigated in the target area; and (d) the public, as well as tourism and recreation industries, will gain access to tracts of BCPL land that were previously land-locked.

20. The BCPL has stated that in terms of its overall mission, it sees three main challenges facing the agency. These challenges are: (a) enhancing its management [operating] efficiency to reduce costs; (b) increasing the rate of return on investments; and (c) mitigating the impacts of forest fragmentation [the breakup of single-owner forest land (for example, timber company or government-owned large parcels of land) into numerous and diverse residential, commercial and other non-public ownerships]. The BCPL believes that to effectively deal with each of these challenges it needs the requested authority to purchase land.

21. The target area for new land acquisitions is the same nine-county area as envisioned in the Board's 2003-05 budget request. This area includes BCPL-owned land in Florence, Forest, Iron, Langlade, Lincoln, Marinette, Oneida, Price, and Vilas Counties. The Board's trust funds currently own a total of 69,059 acres in these nine counties as shown in Table 1 (see also Attachment 1). Of that total, 65,715 acres (or 95%) are owned by the normal school fund (NSF).

**TABLE 1**

**Existing BCPL Owned Land in Nine-County Target Area**

<u>County</u>	<u>Number of Acres</u>	
	<u>All Funds</u>	<u>NSF Only</u>
Florence	2,911	2,677
Forest	17,894	17,092
Iron	5,414	5,174
Langlade	991	871
Lincoln	444	441
Marinette	3,400	3,360
Oneida	22,496	21,715
Price	9,208	8,962
Vilas	<u>6,301</u>	<u>5,423</u>
Total	69,059	65,715

\*NSF -- Normal School Fund.

22. To implement the consolidation plan, BCPL would sell most or all of the 8,697 acres it owns in 25 other counties in primarily northwest, southwest, and south central Wisconsin. Earlier explanations of the plan had seemed to indicate that all of the BCPL lands outside of the target area would be sold so as to concentrate all of the BCPL holdings in the nine-county target area. However, a more recent detailed explanation of how the proposed land bank would operate indicates that the intent is that BCPL would first finalize an inventory of all parcels it owns in the 25

non-target area counties. BCPL would then identify which of those parcels do not meet its criteria for retention and proceed with efforts to sell those parcels.

23. In recent testimony before the Assembly Committee on Forestry, the Executive Secretary of the BCPL identified some of the criteria that would be used by the BCPL for determining whether existing owned-lands should be retained. The criteria that were identified were whether the land in question: (a) provides access to other BCPL property; (b) provides access to other public or private timber holdings; (c) has access to or provides the opportunity to obtain a documented easement for access to BCPL land for land management purposes; or (d) is suitable for ownership by another public agency within an existing project boundary. The BCPL would then intend to conduct periodic sales of existing owned lands in the 25 county non-target area that do not meet such retention criteria. Under the language in the bill, the BCPL would then plan to offer these lands for sale under a sealed bid process.

24. The land holdings by county in the 25 county non-target area are shown in Table 2 (see also Attachment 1). The proceeds from the sales of these normal school fund lands (potential maximum sale of 7,636 acres) would be placed in the proposed "land bank" to be used for purchase of additional land in the nine-county target area.

**TABLE 2**

**Number of Acres of Trust Lands Outside Nine-County Plan Area**

<u>County</u>	<u>Acres Owned</u>		<u>County</u>	<u>Acres Owned</u>	
	<u>All Funds</u>	<u>NSF Only</u>		<u>All Funds</u>	<u>NSF Only</u>
Adams	120	111	Juneau	90	50
Ashland	2,173	2,093	LaCrosse	42	42
Barron	<1	0	Monroe	40	0
Bayfield	286	286	Oconto	80	80
Buffalo	2	2	Pepin	37	0
Burnett	282	240	Polk	26	26
Chippewa	120	120	Portage	40	0
Dodge	160	160	Rusk	160	160
Door	79	38	Sawyer	3,402	3,122
Douglas	400	280	Shawano	57	56
Dunn	325	45	Taylor	180	180
Eau Claire	40	0	Washburn	<u>436</u>	<u>426</u>
Jackson	119	119			
			Totals	8,696	7,636

\*NSF -- Normal School Fund

25. Since this issue was reviewed by the Committee two years, the BCPL has disposed of a total of 859 acres of land outside the target land- holding area and reduced its net total of land holdings in the target area by 721 acres. These changes, by county, are shown in Attachment 2. Also, Attachment 3 to this paper summarizes the data from Tables 1 and 2.

26. BCPL's stated general goal is to reduce all of its land holdings outside the nine-county plan area subject to above-mentioned land retention criteria. It should be noted that this would include a total of 1,060 acres owned by either the common school fund (1,203 acres) or the university fund (37 acres). These acres would presumably be included as lands to potentially be sold. However, the revenues from the sale of lands owned by the common school fund or the university fund would go to the credit of those separate funds and not the proposed account within the normal school fund that would be established for the purchase of additional land holdings for the normal school fund.

27. BCPL staff expects a net reduction in the total acres of land holdings at the end of the consolidation process. Presumably, this would occur both because these other trust funds' lands would not be replaced as a part of the BCPL's total land holdings and because land in the target area may be more expensive than the normal school fund land being sold, meaning a equivalent number of acres would likely not be purchased in the target area.

28. A basic policy question that could be raised is what are the BCPL's appropriate responsibilities with regard to the four trust funds? The following discussion points review this issue.

29. The Board of Commissioners of Public Lands was created by the State Constitution and is composed of the Attorney General, the Secretary of State and the State Treasurer. Further, under the Constitution, the Board is expressly given two duties: (a) to provide for the sale of the school and university lands that were given to the state by the federal government subsequent to the territory entering the union; and (b) to provide for the investment of the monies arising from such sales.

30. Most of those original granted public lands were sold early in the state's history, so that by 1900 only approximately 3% of the original land was still in state (BCPL) ownership. Of the total 77,755 acres currently held in trust by the BCPL, almost 95% is held by the normal school fund and all but 37 acres (held by the university fund) of the remainder is held by the common school fund.

31. An argument could be made that the BCPL was established under the State Constitution for the principal purpose of disposing of the public lands that the new state received through land grants from the federal government and to then manage and invest the proceeds of those sales for the benefit of the respective trust fund beneficiaries. Two of the four funds (the university fund and the agricultural college fund) balances are very small (balances of \$234,100 and \$305,300, respectively as of June 30, 2004) and their principals do not grow. No trust fund lands are owned by the agricultural college fund and the university fund owns only 37 acres. The interest earned on these funds is distributed to the University of Wisconsin.

32. The normal school fund, which has the vast majority of the land holdings, is larger (balance of \$19,855,000 as June 30, 2004) and the interest earnings on this fund are sent to the University of Wisconsin. Having a larger balance and substantial land holdings, this fund's principal can grow, although slowly, primarily through the revenues received from timber sales that the BCPL adds to the fund's principal. The normal school fund is the fund for which the BCPL has indicated it is seeking the proposed land bank authority.

33. In contrast to these three other funds, the common school fund had a balance of \$586,565,600 as of June 30, 2004. Like the other trust funds, this fund also derived its original principal from the sales of grant lands held in trust. This fund also has some land holdings (4,365 acres), and, as with the normal school trust fund, the Board uses any revenues from timber sales to add to the principal of the fund.

34. However, this fund has a much larger source of ongoing fund revenues that serves to significantly grow the principal of the fund each year. Under Article X, Section 2 of the State Constitution, "... all moneys and the clear proceeds of all property that may accrue to the state by forfeiture or escheat; and the clear proceeds of all fines collected in the several counties for any breach of the penal laws ... shall be set apart as a separate fund to be called "the common school fund," the interest of which and all other revenues derived from the school lands shall be exclusively ..." used to support a portion of the costs of the public schools. This means that the principal in the common school fund cannot be appropriated, but that interest earnings on those monies is to be used to support public schools costs. Although this fund constitutes more than 96% of the total BCPL trust fund assets, it owns less than 6% of the Board's total land holdings. It should be noted, however, that none of the trust funds' balances reflect the value of their respective land holdings (if any).

35. Notwithstanding the general constitutional directive for the BCPL to sell the lands held by the trusts for the benefit of trusts' beneficiaries (the common schools, the normal schools, the university and the agricultural college), the BCPL has a long history of exercising its constitutional and statutory powers to withhold land from sale for the interests of the trust(s). Under the constitutional provision directing that the Board shall make provision for the sale of all school lands, there is a qualifying provision that permits the Board to withhold from sale any portion of such lands when the Commissioners deem such action to be expedient.

36. The BCPL has indicated that in 1913, the Commissioners enacted a moratorium on further land sales by the BCPL. The BCPL has references from that date identifying a Board position of withholding remaining trust lands from sale due to low market prices or when a Board determination is made that such action is in the beneficial interests of the trusts. While initially intended apparently as a short-term provision, a 1942 biennial report of the Board subsequently reinforced that earlier adopted position.

37. Subsequently, in 1961, a formal policy statement was adopted by the Board stipulating that further sale of trust fund lands would only be done for the following purposes: (a) sales direct to the then State Conservation Commission (now the DNR Board) of trust lands located within established state forests or parks or of lands that the Conservation Department (now DNR)

believes suitable for wildlife habitat and public fishing and hunting purposes; (b) sales to counties in this state of land to be used for county forest purposes; (c) sales to the federal government if the land is to be used for forestry purposes and is located within the boundaries of national forests in this state; or (d) sale of isolated trust lands for private use if the land is of no potential (timber) harvest value to the BCPL and it is located outside the boundaries of any established state or county forest or park. This also remains a current policy position of the Board.

38. There is also a statutory authorization for such withholding of trust fund lands for sale. Section 24.09(2) of the statutes provides that whenever the BCPL believes it is in the public interest, it may withdraw or withhold from sale all or portions of its trust funds land holdings if the Board believes it is not advantageous to sell such lands and to withhold such sale for so long as the Board believes that action to be in the beneficial interest of the state.

39. Finally, in response to questions raised about this Board policy in the last budget cycle, the Board adopted, on July 10, 2003, a resolution stating that the current Board "affirms its policy of withholding trust lands from general sale, to continue its efforts to consolidate its land holdings through its existing trading authority [allowing exchange of lands of approximate value with other governmental entities], and to continue to manage its lands through environmentally-sound sustainable forestry for continued income for the trust funds."

40. Thus, the BCPL has had a long-standing moratorium on any further general disposal of trust fund lands. However, it argues that it is achieving investment returns on funds' land assets in two ways: (a) by good land management practices and the accompanying general increase in land values, the property held - especially the better quality forest land - is appreciating in value; and (b) its timberland management and sustained timber harvesting program results in increased revenues from timber sales which it adds to the cash principal of the funds. For the normal school fund beneficiaries (the University of Wisconsin), or the common school fund beneficiaries (library aids to public schools), however, the timber sale revenues do not represent increased earnings for the fund beneficiaries. The BCPL, however, argues that by increasing the principal of the fund, this adds monies to the funds to be invested and this provides additional investment earnings that are distributed to the beneficiaries.

41. The Committee could address this overall policy issue by making a basic decision as to whether or not it supports the concept of granting the BCPL new powers to purchase land for interests of the trust funds and to expand its current level of active timberland management.

42. If the Committee believes that the original Constitutional goal of selling the trust lands should resume precedence as a BCPL goal, it could choose to maintain current law, thereby not providing the BCPL with the authority to add to its land holdings. The Board could still sell the lands it owns outside the nine-county retention area, but the sale proceeds would go to the cash principal of the owning funds and the Board could still exchange or trade land parcels.

43. Further, a concern that has been raised in the past about such BCPL proposals and other proposals for purchase of land in the northern areas of the state is that there is already a significant proportion of public lands ownership in the area. Table 3 shows the amount of

conservation and recreation land ownership in the nine-county BCPL target area. The data is based on the most recent information available from DNR. It shows the number of acres of public conservation and recreation land in each of the nine counties in the BCPL target area. The table also indicates the number of acres in each of those counties that are owned by the federal government, the state (BCPL and DNR), the county, and the number of acres of other public areas. At the bottom of the table is information portraying the total number of publicly-owned acres in the nine-county area by each category. Finally, the table shows the total number of those publicly-owned acres in each county and the percent that that is of the total acres in the county.

**TABLE 3**

**Public Conservation Recreation Land  
Acres by Ownership in Wisconsin**

	Nat'l Forests	BCPL Trust Lands	Department of Natural Resources					DNR Total	State Total	County Parks and Forests	Other Public Areas	Total Public Lands	Total Acres in County	% of Public Ownership
			Wild River	Natural & Parks Area	Fisheries	Wildlife								
Florence Forest	85,028	2,911	5,275	4,986	2	40	10,303	13,214	36,843	178	135,264	321,438	42.1%	
Iron	345,821	17,894	25	568	185	3,441	4,218	22,112	10,920	249	379,103	666,790	56.9	
Langlade	0	5,414	60,893	2,238	0	11,700	74,830	80,244	174,348	931	255,524	504,193	50.7	
Lincoln	32,727	991	3	127	13,224	2,830	16,185	17,176	127,109	3,846	180,858	556,790	32.5	
Marinette	0	444	1,881	2,910	2,639	3,599	11,029	11,473	100,796	3,145	115,414	580,386	19.9	
Oneida	0	3,400	11,864	4,993	1,533	8,140	26,530	29,930	233,449	1,916	265,295	899,915	29.5	
Price	11,219	22,496	71,956	2,898	703	9,303	84,859	107,355	82,494	1,908	202,976	779,235	26.0	
Vilas	151,410	9,208	9,066	265	281	9,611	19,223	28,431	92,815	1,615	274,271	824,637	33.3	
	<u>54,567</u>	<u>6,301</u>	<u>138,827</u>	<u>727</u>	<u>541</u>	<u>8,876</u>	<u>148,971</u>	<u>155,272</u>	<u>40,851</u>	<u>2,981</u>	<u>253,671</u>	<u>652,067</u>	38.9	
Total Acres <sup>a</sup>	680,772	69,060	299,791	19,712	19,107	57,538	396,148	465,208	899,626	16,769	2,062,376	5,785,451	35.6%	
% Total Acres <sup>b</sup>	11.8%	1.2%	5.2%	0.3%	0.3%	1.0%	6.8%	8.0%	15.5%	0.3%	35.6%			
% Public Lands Acres <sup>c</sup>	33.0%	3.3%	14.5%	1.0%	0.9%	2.8%	19.2%	22.6%	43.6%	0.8%				

<sup>a</sup>Total acres in the nine-county area owned by the entity.

<sup>b</sup>Percent of total acres in the nine-county area owned by the entity.

<sup>c</sup>Percent of public land acres in the nine-county area owned by the entity.

44. As Table 3 indicates, the total of those publicly-owned conservation and recreation areas represents 35.6% of the total acres in the nine-county target area. However, for two of the nine counties, the public ownership percentage is more than 50% of the total number of acres in the county. An argument could be made that there is already a high degree of public ownership in this area and that it is therefore not desirable to increase the amount of public ownership of conservation and recreation lands in this nine-county area. This would be another reason for which the Committee could choose to maintain current law with regard to this proposal.

45. Alternatively, the Committee could decide that it supports the basic concept of allowing the BCPL to purchase land for normal school fund as an investment in accordance with the BCPL's adopted land consolidation plan. In that case, the Committee could either adopt the Governor's recommended language or it could consider the following discussion points regarding several possible modifications to the proposed land purchase authority as contained in AB 100.

46. First, it could include a provision to require that the BCPL begin treating revenues (earnings) from the timber sales the same way it treats other investments, that is, as fund earnings to be distributed to the fund beneficiaries. Primarily, this would affect the normal school fund, but there are some timber sales revenues in the common school fund that the BCPL is also currently adding to fund principal rather than distributing to that fund's beneficiaries (the public schools). There would be at least two reasons for taking this action. First, the Constitution states that the interest of the school fund and all other revenues derived from the school lands shall be directed to the beneficiaries of the funds [the common and normal (university)schools]. Second, the currently-owned lands and especially the proposed new land to be acquired, should, on a comparable interest earnings basis, have the timber sales revenues included as interest earnings if the revenue generating capabilities are to be treated on an equivalent basis.

47. Second, while the language of the statutes generically reference public lands held by any of the four trust funds, the reality is that the normal school fund has any substantial land holdings. The agricultural college fund no longer has any land holdings at all and the university fund holds only 37 remaining acres. Further, while the common school fund currently owns 4,365 acres, that is only 5.6% of the total land owned by the BCPL. The normal school owns the preponderance of the BCPL's current land holdings, more than 94% (73,353 acres) of the Board's total holdings. In essence, this proposed change is really about the land assets of the normal school fund (NSF).

48. Since the introduction of the budget, the BCPL has clarified that its actual intent with regard to the requested new authority to purchase land as an investment was to have that authorization limited to lands now owned and other lands that would be purchased be restricted to the NSF. One consideration for the Committee would be to add language to restrict any new land purchases to only purchases that come from revenues that become available in the NSF due to the sale of existing NSF land that is outside of the target area, and to further specify that any new land purchased must become a part of the assets of the NSF.

49. Third, the Committee could provide for a distinct program revenue appropriation to be used for this purpose. This would then serve as the "land bank account" in lieu of the separate off-budget account that would be established under the bill. The appropriation would be funded from the revenues received from the sale of existing lands held by the NSF and would be established for purposes of: (a) using those revenues to purchase new lands in the plan consolidation area; and (b) for transaction costs associated with the sale of existing NSF lands and purchase of new lands to be owned by the NSF. This would ensure that the tracking of revenues and expenditures for this purpose would flow through the appropriation accounting system so that the transactions could be readily monitored as to sales revenues received and land purchase

expenditures made.

50. Fourth, the Committee could modify the provisions in the bill so that the investment purchase authority would apply only to revenues garnered from sale of the NSF-owned lands, only those NSF revenues could be used to invest in land purchases, and that such land purchase investments could only be made for the NSF. Further, it could add provisions specifying that any acquisition of new lands for NSF could not result in the total acreage owned by the NSF exceeding the total acreage owned (both within and outside the consolidation plan area) being any greater than the total acreage owned by the NSF on the effective date of the budget bill.

51. Fifth, the Committee could require further legislative review of the land consolidation plan should the BCPL decide, at some future date that, the current land consolidation plan should be changed. For example, the current plan could be amended at some future time to add or delete counties from the current nine-county target area. BCPL staff state that the nine-county area has been the desired target area for some time and is unlikely to change. However, under the bill, the Board could modify the existing consolidation plan or adopt a different plan and still have the statute be operative. The language in the bill could be changed to reference the specific plan as adopted by the Board on July 10, 2003. Alternatively, the Committee could adopt language requiring the Board to notify the Joint Committee on Finance and the Legislature of any proposed changes in the July 10, 2003, plan at least 14 days before any amended or new consolidation plan is adopted by the Board and to provide that the amended or new plan could be adopted if the Joint Committee on Finance does not object before the end of the 14-day period.

52. Sixth, under the bill, a new program revenue appropriation funded from monies transferred from the earnings of the trust funds, would be created to make payments to local units of government for what would be termed "annual payments in lieu of property taxes" for any land purchased by the Board under this new statutory authority. The proposed statute would provide for this payment, in an amount equal to \$0.74 per acre, for any land purchased by the Board that was at the time of the purchase subject to assessment or levy of a real property tax. The specific intent to be accomplished by the language in the bill is somewhat unclear. However, the general intent is related to concerns that were raised last biennium regarding the similar land purchase initiative that was contained in the 2003-05 Governor's biennial budget recommendations.

53. Those concerns related to the potential impact on local property tax collections if the state becomes the owner of the previously privately-owned land and thus the land is no longer subject to local property tax assessments. Among the current state programs that are established to deal with these types of concerns are the Forest Crop Land (FCL) and the Managed Forest Land (MFL) programs and the DNR payment in lieu of taxes provisions for land purchases it makes, such as for the stewardship program.

54. Under the bill, the new appropriation would be for the BCPL to make "payments in lieu of property taxes." For the purposes of this appropriation, this would be specified as annual payments to be made to local governments for any land that the BCPL would purchase under the Board's land consolidation plan. Under the bill, revenues for this appropriation would come from the account that would be established to receive the proceeds of any land sales occurring as a result

of the sale of NSF lands. The proposed statute would provide that a payment would be made for any land that at the time of purchase by the BCPL under this new investment authority was subject to assessment or levy of a real property tax. The payment would be paid to the appropriate local governmental unit, would be designated as a payment in lieu of property taxes, and would be set at a fixed payment amount of \$0.74 per acre.

55. The proposal in the bill is similar in structure to a current program under the Department of Natural Resources (DNR), the managed forestland program. The following discussion points review several different DNR programs that relate to required payments by the DNR to certain local governmental units as a result of either state purchase of land or state preemption of normal property taxation of certain lands (primarily forest lands). These various programs are briefly summarized below.

56. Beginning in 1964, there has been a statutory requirement that when DNR acquires land, it pays aids in lieu of property taxes on the acquired land to either the city, village or town in which the land is located. Since 1972, this payment has been set at an amount equal to the tax that would be due on the estimated value of the property at the time it was purchased. Thus, it is not the assessed value of the property as is normally used for property tax assessment. Further, for purposes of this aids in lieu of taxes payment, the purchase value is adjusted annually to reflect changes in the equalized value of all land, excluding improvements, in the taxation district. The municipality receiving the payment then pays each property taxation entity (including the county and school district) a proportionate share of that payment, based on the entity's tax levy.

57. More comparable programs to what BCPL is proposing are the DNR's managed forestland (MFL) program and its predecessor, the forest cropland (FCL) program, which are designed to encourage landowners to manage private forestlands for the production of future forest crops for sustainable use through sound forestry practices. Land enrolled under either of these programs is exempt from local property taxes. Instead, landowners make specified payments (in lieu of local property tax payments) that are to go to the towns or villages in which the enrolled land (under the respective program) is located. A portion of these payment amounts also goes to the counties. The amounts to be paid are specified by statute. Current required payment rates for land enrolled in the FCL program since 1972 is \$1.66 per acre. Further, this rate is required to be adjusted every ten years (next increase would be in 2013).

58. However, new entries into the FCL program were closed as of January 1, 1986. Instead, in lieu of continuing to allow additional enrollments in the FCL program, 1985 Act 29 created the managed forestland (MFL) program. While new entries into the FCL program were prohibited, existing contracts under the program remain in effect until their termination. The last contract under the FCL will not expire until 2035. Further, 1993 Act 131 and then 2001 Act 109 allowed for land enrolled under the FCL program to be converted to enrollment in the MFL program under certain conditions.

59. The MFL program was established to encourage the productive management of private forestlands. Under the program, landowners may enroll land (minimum of 10 acres) for a period of either 25 or 50 years. The initial payment rate for enrolled land under the program was set

at \$0.74 per acre. However, that rate is now \$0.83 per acre (effective in 2003) and is to be adjusted every fifth year thereafter. For both land still enrolled under the FCL program and for land enrolled under the MFL program, the required periodic rate adjustments are to be done using a formula that accounts for changes in the average statewide property tax for undeveloped land. Further, for landowners who enroll land to the MFL on or after April 28, 2004, the payment rates are calculated under a new formula. That annual acreage payment is equal to 5% of the average statewide property tax per acre of property assessed as productive forest land in 2004. This figure will be recalculated in 2007 and every five years thereafter. Based on 2003 property tax data (for taxes payable in 2004) landowners newly enrolled in 2004 were required to pay \$1.45 per acre for land open to public access that was enrolled in the MFL under this new rate.

60. It is understood that BCPL's goal was to have its PILT rate be based on the MFL program rate for open-land enrollment. BCPL wanted to use the MFL rate because it believes, based on conversations with major forestland owners in the nine-county target area, that all or almost all of the land that BCPL would be interested in purchasing is already enrolled in the MFL program under the open-land (open to public access) PILT rate. The BCPL has now indicated that what it would like to have is for the payment rate for new BCPL-acquired land to be same as is paid to local governments under the MFL open-land enrollment option.

61. If the intent is that the land that will be acquired in the nine-county area will all (or almost all) already be enrolled in the MFL program, the land would already be exempted from such taxation under the MFL program so long as the land is enrolled in the program. Only land that was purchased that is not in the MFL program (or any similar program) would be land that would be covered by the payment as provided in the bill. Therefore, if the goal is to have existing PILT payments continued on any land that BCPL might purchase, alternative language is needed. The Committee could modify the bill to specify that the BCPL rate should be the same as rate set under the MFL program for the land as it applies for the time that it was enrolled in the MFL program and delete the language in the bill.

62. Further, the Committee could add language to provide that in the event it is determined that land which the BCPL desires to purchase in the nine-county target area is not currently enrolled in the MFL program but rather is still enrolled in the FCL program, then it is the applicable FCL payment rate under which the BCPL should make its PILT payments to the local units of government.

63. This additional change would not, however, address a situation where some of the land to be purchased by the BCPL in the nine-county target area turned-out to be in private ownership and not enrolled in the MFL or FCL programs. Although such a situation may be unlikely, in that case the current amount of local property taxes being paid on such property might be higher than the MFL payment amount. If this is a concern for the Committee, one way it could be addressed would be to provide that in that case the BCPL would be required to pay a PILT rate equivalent to the rate required to be paid for stewardship purchases.

64. Under current law, when the DNR acquires land for any of its program purposes -- such as the stewardship program, for example -- it also pays aids in lieu of property taxes on the

land it purchases to the city, village or town in which the land is located. However, the DNR payment rate is in an amount equal to the tax that would be due on the estimated value of the property at the time it was purchased (generally the purchase price), but adjusted annually to reflect changes in the equalized valuation of all land, excluding improvements, in the taxation district. The municipality then pays each taxing jurisdiction (including the county and the school district) a proportionate share of the payment, based on its tax levy. This formula can result in required payments to local units of government that are actually greater than the amount of property taxes that would be paid if the property had remained under private ownership.

65. The Committee could consider whether this type of formula payment should be made in cases where the BCPL would purchase privately-owned land that is not enrolled in the MFL or FCL programs. This would likely mean that any such PILT payments would be more costly for BCPL and the normal school fund than if such land were covered just by the proposed PILT rate under the MFL program. Alternatively, the Committee could provide that any land to be purchased by the BCPL that is not at the time of purchase enrolled in either the MFL or FCL programs should, upon purchase, be subject to PILT payments as if the land were to be enrolled in the MFL program at the time of purchase. Currently, that would be at the new formula rate for land enrolled after April 28, 2004.

66. If the goal in establishing provisions for payments to local governments is to totally replace otherwise lost revenues resulting from the BCPL land purchase, then there are some additional current revenue sources from these type of lands that would be eliminated by the conversion of MFL enrolled lands to state (BCPL) ownership. These are outlined below.

67. There is an annual yield tax of 5% of the sale value imposed on all merchantable timber harvested on land enrolled in the MFL program, except that any land enrolled in the program subsequent to April 28, 2004, is exempt from assessment for the first five years of the contractual agreement. Yield tax revenues are divided between the municipality in which the land is located and the county, with 80% going to the municipality and 20% going to the county. Also, under the FCL program, there is a comparable tax called a severance tax. This tax is assessed at 10% of the value of timber harvested annually. Under current law, DNR retains from these severance taxes an amount equal to the \$0.20 per acre payment (discussed below) it is required to make on the FCL enrolled land and the balance of the severance tax, if any, goes to the municipality (80%) and the county (20%).

68. Under current law, DNR also makes two special payments to municipalities and counties with MFL and FCL enrolled land within their boundaries. First, DNR has an appropriation from which it makes payments to each county which has a total of more than 40,000 acres within its boundaries that are entered on the tax roll of MFL or FCL enrolled land. The amount paid to each county is dependent upon the total amount appropriated and each county's proportion of the total number of MFL and FCL enrolled land in the state. This payment would not seem to be applicable to land that BCPL would purchase. Second, however, DNR also pays towns and villages \$0.20 per acre for each acre of land in their borders that are enrolled in the FCL or MFL programs. Each town or village in turn shares 20% of such payments with the county.

69. The Committee could choose to also require that BCPL continue to pay an equivalent annual yield tax on all merchantable timber it harvests on any acquired lands in the target area that are, at the time of purchase, subject to this yield tax requirement. It could also choose to require that the BCPL continue to pay the \$0.20 per acre for lands that it purchases that were, at the time of purchase, enrolled in either the MFL or FCL programs. However, adding these payment requirements would increase BCPL's operating costs on on-going basis and reduce the level of net interest earnings that could be distributed.

## **ALTERNATIVES**

1. Approve the Governor's recommendation.
2. Modify the Governor's recommendation by adopting one or more of the following changes to the bill:
  - a. Require that the BCPL, upon the effective date of the bill, begin including all timber sale revenues as a part of the total fund earnings for the respective fund;
  - b. Provide that the land purchase investment authority apply only to the normal school fund;
  - c. Create a separate PR appropriation to be funded from normal school fund land sale revenues and to be used for the purchase of new land to be owned by the normal school fund; and delete the language in the bill relating to the establishment of a separate account within the normal school fund for this purpose;
  - d. Provide that the total land holdings of the normal school fund may never exceed the total number of acres owned by the fund on the effective date of the bill;
  - e. Provide that the BCPL shall make PILT payments to local governments on any new land that it acquires equal to: (1) the statutory MFL payment formula provision that would apply for the land at the time that it is purchased by the BCPL if the land is currently enrolled in the MFL program; or (2) the statutory FCL payment formula provision that would apply for the land at the time that it is purchased by the BCPL if the land is currently enrolled in the FCL program;

f. Provide that the BCPL shall make PILT payments to local governments on any new land that it acquires that is not currently enrolled in either the MFL or FCL programs at one of the following rates:

(1) The statutory MFL payment formula provision for land newly-enrolled in the program after April 28, 2004; or

(2) The statutory payment rate that the Department of Natural Resources pay for land that it acquires;

g. Provide that the BCPL shall make annual yield tax payments on timber harvests on all new land that it purchases equal to 5% of the merchantable value of the timber harvested on land that was enrolled under the MFL program at the time of purchase by BCPL and shall pay an annual severance tax equal to 10% of the value of the timber harvested on land that was enrolled under the FCL program at the time of purchase by BCPL;

h. Provide that the BCPL shall make annual payments to local governments of \$0.20 per acre for all land that it purchases that at the time of purchase in currently enrolled in either the MFL or FCL program;

i. Provide that any PILT or other type of payment that BCPL is required to make for newly-acquired land shall be made from a new separate PR appropriation to be created for such purposes and that is to be funded only from normal school fund revenues; and delete the existing PILT appropriation that is in the bill;

j. Provide that any land purchase that the BCPL proposes to make must be in accord with either:

(1) The land consolidation plan approved by the BCPL on July 10, 2003; or

(2) Any revised or amended land consolidation plan proposed by the Board for which the Joint Committee on Finance has been notified of the proposed changes and for which no objection to the proposed changes have been made by the Committee Co-chairs within 14 days of the date of having received notification of the proposed changes;

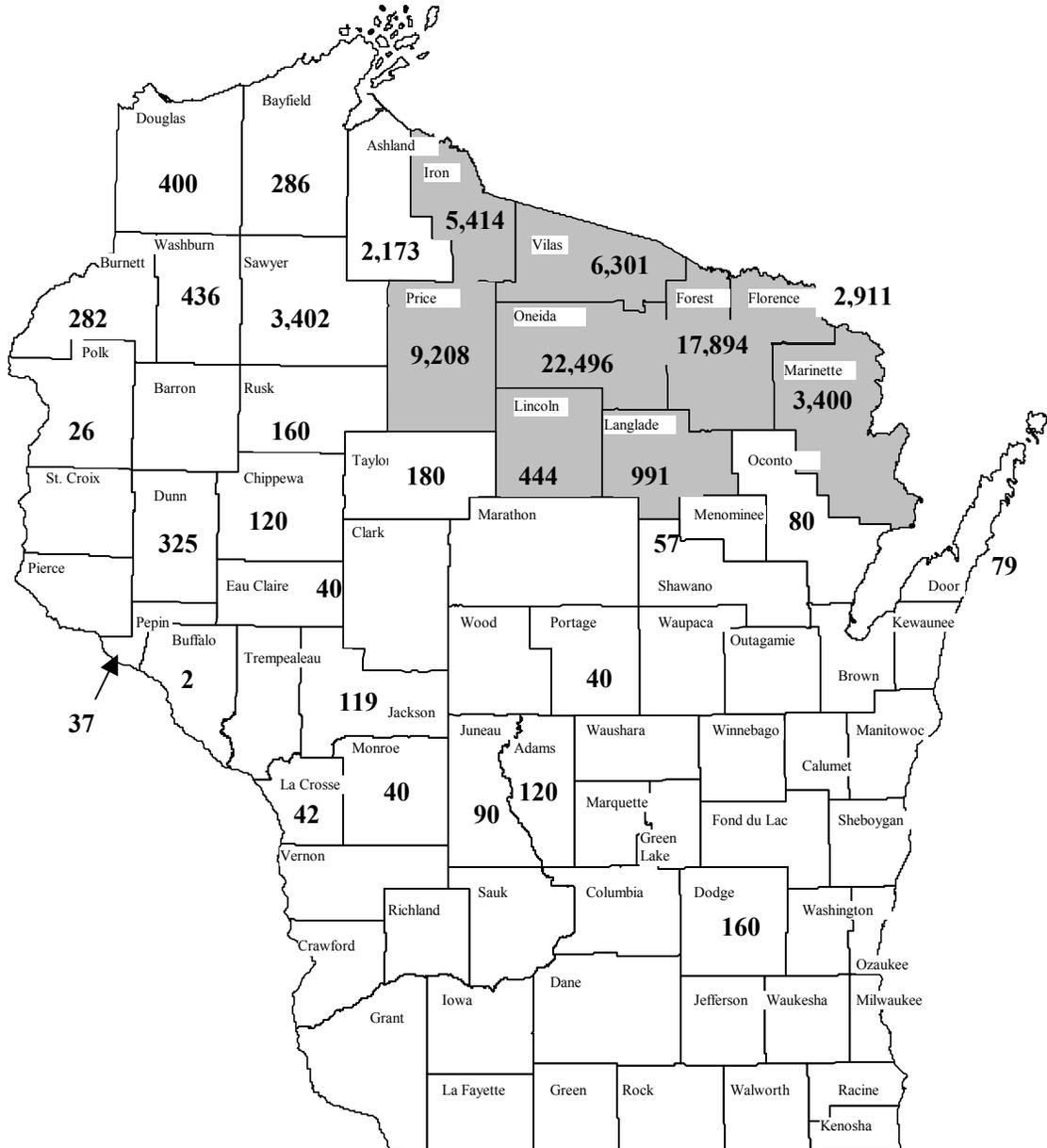
k. Require that the BCPL submit an annual report to the Governor and the Joint Committee on Finance on the amount and location of all existing land sold and of all new land purchased under this new land purchase authority.

3. Maintain current law.

Prepared by: Terry Rhodes  
Attachments

# ATTACHMENT 1

## Currently Owned Acres of Trust Lands by County



Note: Shaded counties are the targeted nine-county consolidation plan counties.

## ATTACHMENT 2

### Changes in BCPL Owned Acreage, by County

	<u>April, 2003</u>	<u>February, 2005</u>	<u>Change</u>
Adams	120	120	0
Ashland	2,173	2,173	0
Barron	1	0.24	-0.76
Bayfield	276	286	10
Buffalo	303	2	-301
Burnett	282	282	0
Chippewa	120	120	0
Columbia	108	0	-108
Crawford	52	0	-52
Dodge	160	160	0
Door	79	79	0
Douglas	434	400	-34
Dunn	325	325	0
Eau Claire	40	40	0
<b>Florence</b>	2,911	2,911	0
<b>Forest</b>	17,894	17,894	0
Grant	92	0	-92
<b>Iron</b>	6,816	5,414	-1,402
Jackson	119	119	0
Juneau	90	90	0
La Crosse	42	42	0
<b>Langlade</b>	991	991	0
<b>Lincoln</b>	444	444	0
<b>Marinette</b>	3,400	3,400	0
Monroe	40	40	0
Oconto	80	80	0
<b>Oneida</b>	22,463	22,496	33
Pepin	37	37	0
Pierce	78	0	-78
Polk	26	26	0
Portage	40	40	0
<b>Price</b>	9,207	9,208	1
Richland	4	0	-4
Rusk	160	160	0
Sawyer	3,402	3,402	0
Shawano	57	57	0
Taylor	180	180	0
Vernon	157	0	-157
<b>Vilas</b>	5,656	6,301	645
Washburn	436	436	0
Wood	40	0	-40
<b>TOTALS</b>	<u>79,335</u>	<u>77,755</u>	<u>-1,580</u>

Note: Target area counties are in bold.

### ATTACHMENT 3

#### BCPL Currently Owned Acres by County

	Non-Target Area <u>County</u>	Target Area <u>County</u>
Adams	120	
Ashland	2,173	
Barron	<1	
Bayfield	286	
Buffalo	2	
Burnett	282	
Chippewa	120	
Dodge	160	
Door	79	
Douglas	400	
Dunn	325	
Eau Claire	40	
<b>Florence</b>		2,911
<b>Forest</b>		17,894
<b>Iron</b>		5,414
Jackson	119	
Juneau	90	
La Crosse	42	
<b>Langlade</b>		991
<b>Lincoln</b>		444
<b>Marinette</b>		3,400
Monroe	40	
Oconto	80	
<b>Oneida</b>		22,496
Pepin	37	
Polk	26	
Portage	40	
<b>Price</b>		9,208
Rusk	160	
Sawyer	3,402	
Shawano	57	
Taylor	180	
<b>Vilas</b>		6,301
Washburn	<u>436</u>	<u>          </u>
<b>TOTALS</b>	8,697	69,059

Note: Target area counties are in bold.