



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #230

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

#### **CURRENT LAW**

The Board of Commissioners of Public Lands (BCPL) is required to reimburse the Department of Administration (DOA) from BCPL's administrative appropriation for the costs of administrative services provided to the Board by DOA and other state agencies. In connection with this requirement, DOA is directed to render an accounting to BCPL for the costs of all administrative services provided to it by DOA and other state agencies. Further, the statutes provide that all monies received by DOA for these costs shall be deposited as revenue to the general fund.

#### **GOVERNOR**

Continue the Board's budget base level funding of \$126,800 PR annually for payment of these costs. Also, estimate GPR-earned revenues from these cost billings at \$92,200 annually.

#### **DISCUSSION POINTS**

1. From 1991-92 through the end of the 1996-97 fiscal year, the BCPL was required to lapse to the general fund each year an amount from the agency's general administrative 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 directed 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 amount was taken, any remaining unencumbered funds in the BCPL's administrative appropriation reverted to the balances of the Board's four trust funds. The annual federal indirect cost reimbursement rate applied to determine the Board's annual lapse amount varied between 6.0% and 9.7%.

2. The 1997-99 biennial budget (Act 27) modified this lapse provision to require that the Board deposit 10% of its annual total program revenue receipts to the general fund to offset the costs of general state services provided to the agency. The BCPL would retain the remaining 90% of program revenue receipts for the costs of their general program operations. This was similar to the lapse provisions of a number of other program revenue supported agencies.

3. In 1997-98, the then Secretary of the Board requested a memorandum from an assistant attorney general in the Department of Justice regarding the new reimbursement mechanism established under Act 27. In that memorandum, the attorney gave his opinion that the Act 27 reimbursement mechanism was unconstitutional. He based his opinion on the view that "Since the provision in question is purportedly intended to require the payment of school and university [trust] funds to the general fund, for no particular purpose, it is clear that the provision amounts to an unconstitutional diversion of school trust funds." Based on that memorandum, the BCPL chose not to make the required 10% lapse of revenues to the general fund as required by statute. Under Act 27, GPR-earned from the BCPL under this provision had been estimated at \$125,300 in 1997-98 and \$91,000 in 1998-99.

4. During its deliberations on the 1999-01 budget, the Committee reviewed the refusal on the part of the BCPL to pay the statutorily-required amounts to the general fund. The Governor's budget recommendation for the BCPL was that the provision regarding the transfer of 10% of the gross receipts from the trust fund investments (interest earnings) be repealed. The Governor proposed instead that the Board be required to reimburse DOA from BCPL's general program operations appropriation for the cost of central administrative services provided to the Board by DOA and other state agencies. The Governor's budget included funding 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 projected reimbursement costs.

5. As a part of the Committee's review of this issue, it was noted that statutory provisions applicable to BCPL operations [s. 24.04, 24.09(1)(bm), 24.53 and 24.62(1)] all explicitly authorized the deduction of administrative-related expenses associated with land sales and exchanges, investigations of land claims and the management and operation trust funds accounts from the respective sales revenues or investment income of the funds. Such amounts are credited to the available revenue balance of the Board's operating appropriation to permit payment for these required expenditures.

6. It was further noted that the new language in the Governor's budget recommendation was intended to specifically address the concern raised in the DOJ attorney's memorandum that there was "no particular purpose" associated with the required lapsing of 10% of the trust fund interest earnings to the general fund. The proposed new statutory language was based on the view that general administrative services provided by DOA and other agencies to the Board, if billed as operating costs to the Board, are deductible from the gross revenues of the trust funds just like other administrative charges that are paid by the Board from its general operating appropriation.

7. The members of the Board, however, indicated that notwithstanding the proposed change in language, concerns remained. The Board advised the then Secretary of DOA that they

continued "to have concerns regarding the expenditure of school fund earnings in this [proposed] manner." They further expressed concerns that the proposed charges might be questionable, might not represent the actual costs of providing services to the Board and might not be within the scope of the Board's constitutional mandate regarding the use of the earnings of the trust funds.

8. In its action on the Governor's 1999-00 recommended budget, the Committee approved on a 16-0 vote the change as proposed by the Governor with the following modifications: (a) it added language to require that the reimbursement from BCPL for administrative services provided to the Board by DOA and other state agencies, be based on DOA "rendering an accounting to the Board of Commissioners of Public Lands for the costs of all administrative services provided by the Department and other state agencies ... to the Board."; and (b) it added clarifying language to specify that the amounts provided to DOA for reimbursement of administrative services provided to the Board are to be deposited in the general fund.

9. The provisions as recommended by the Governor and as further modified by the Joint Committee on Finance were enacted into law as part of 1999 Act 9. According to the BCPL, it first received a billing under these new provisions on September 26, 2000, for costs of administrative services provided in fiscal year 1999-00. The total billing was for \$89,506. On October 25, 2000, the members of the Board sent a letter to the Secretary of DOA in which they indicated that they "do not believe that DOA followed the directive of the Joint Committee on Finance" with respect to what was intended by the statutory language added by Joint Committee on Finance requiring that "DOA render an accounting of the specific charges for which reimbursement is being requested." To date, the Board has not paid any amount on this billing. The Secretary of the Board has indicated that he feels that one portion of the billing, for \$8,483 is reasonable that but that a second component for \$81,023 is not reasonable.

10. The State Controller's Office in DOA was the one responsible for the development of the calculation of the costs of services for which the BCPL is to provide reimbursement to DOA for deposit to the general fund. The State Controller's Office developed these estimated costs using the methodology described below.

11. For purposes of grant awards, the federal Office of Management and Budget and the federal Department of Health and Human Services have developed manuals setting forth principles and general standards to be followed by state and local governments for determining state or local costs to be considered as a part of federal grant awards, cost reimbursement contracts and other federal agreements. These manuals do not specify a single methodology to be followed but rather indicate general approaches to be considered in determining two types of costs that a governmental unit can identify. The first type of cost relates to direct costs incurred by an individual agency in administering a federal grant. For instance, if an agency adds a position or allocates an existing position to work on a grant, that would be a direct cost. The second type of cost relates to indirect costs. Indirect costs can be those incurred by an agency or by a government for general operations and thus not directly associated with a federal grant, but nonetheless costs that the agency or government is generally incurring for all the activities in which it may be engaged. These might be viewed as generalized costs that for cost allocation purposes need to be attributed on some proportional basis across all of the activities of the agency or the government.

12. For purposes of developing the required accounting of the costs of general administrative services provided to the BCPL, the State Controller's Office developed two cost allocation schedules. The first was called a "Statewide Cost Allocation Plan (federally allocable) Costs" and the second was not titled but was a general allocation schedule of certain GPR costs. The first cost allocation schedule is of a type that would be used to derive a rate that BCPL might claim as reimbursement under federal indirect costs in association with a federal grant. That figure for 1999-00 totaled \$8,483 and represented varying proportions of certain central general executive services attributable to BCPL, such as personnel services, procurement services and budget operations that are GPR-financed. Using number of employees, purchase orders and like measures, BCPL's proportionate share was determined.

13. The second cost allocation schedule dealt with other general executive and legislative services, involving the GPR budgets for such agencies as the Department of Justice, Governor's Office and the Legislature and for remaining GPR budgets for other agencies such as DOA and DER that were not included in the costs allocations described above. In this case, a single measure was used for the allocation percentage. This was a measure of the financial records activity of the BCPL compared to total such activity for all state agencies. That resulting percentage was used to derive an estimate of BCPL's share of the indirect costs of general government operations.

14. When asked if the BCPL planned to pay the required amounts, the Secretary of the Board reiterated his view that the billing was not consistent with the Committee's intent, but suggested that if the Committee indicated that it views this billing as generally in accord with its intent, he thought the Board would agree to make the payments. The Board Secretary indicated that BCPL already receives a number of billings from DOA for such costs as rent, telephone and IT services, and mail services. However, these services from DOA are paid as direct PR billings to individual agencies based on occupancy or usage. In contrast, the above calculations involve only costs that are funded by GPR in the respective agencies and for which there is no bill-back to individual agencies.

15. If the Committee believes that the procedures used by DOA to determine the billing for the 1999-00 fiscal year represent a reasonable interpretation of the provisions of the statute and legislative intent in providing the required rendering of costs of general administrative services provided to BCPL by DOA and other agencies, then it could approve the estimated collection of \$92,200 annually from the Board under this statute. If the Committee takes this action, it could also reduce the Board's base budget by \$34,600 PR annually to provide only a level of base funding necessary to pay for the estimated reimbursement of costs in 2001-03.

16. Under the above approach, the Committee may also wish to consider what action, if any, to take with regard to billings for 1999-01. The Committee could consider increasing the BCPL's budget by one-time funding of \$179,000 PR in 2001-02 and requiring that the Board use those funds to make the administrative reimbursements for 1999-00 and 2000-01 as originally required under 1999 Act 27. This would also result in a one-time increase in general fund revenues in 2001-02 of \$179,000.

17. Alternatively, if the Committee has concerns over the level of calculated costs that

were billed to BCPL in 1999-01 and now thinks that such costs should not have to be paid by the BCPL, it could repeal the statutory requirements established under 1999 Act 9 and remove any requirement for BCPL to make such payments. The Committee could then delete \$126,800 PR annually from the Board's base included for payment of these costs and also reduce estimated GPR-earned payments to the general fund by \$92,200 annually.

**ALTERNATIVES TO BASE**

1. Provide one-time additional funding of \$179,000 PR in 2001-02 and include session law language requiring that the Board of Commissioners of Public Lands (BCPL) make payment to the Department of Administration (DOA) for the costs of services to be reimbursed by BCPL for fiscal years 1999-00 and 2000-01, no later than June 30, 2002. Increase estimated GPR-earned by \$179,000 in 2001-02.

<u>Alternative 1</u>	<u>GPR</u>	<u>PR</u>	<u>TOTAL</u>
<b>2001-03 REVENUE</b> (Change to Base)	\$179,000	\$0	\$179,000
<i>[Change to Bill]</i>	<i>\$179,000</i>	<i>\$0</i>	<i>\$179,000</i>
<b>2001-03 FUNDING</b> (Change to Base)	\$0	\$179,000	\$179,000
<i>[Change to Bill]</i>	<i>\$0</i>	<i>\$179,000</i>	<i>\$179,000</i>

2. Repeal the current law provisions which require: (a) the Board of Commissioners of Public Lands to reimburse DOA from BCPL's administrative appropriation for the costs of administrative services provided to the Board by DOA and other state agencies; and (b) DOA to render an accounting to BCPL for the costs of all administrative services provided to it by DOA and other state agencies. Delete \$126,800 PR annually from BCPL's base that was included for payment of these costs and also reduce estimated GPR-earned payments to the general fund by \$92,200 annually.

<u>Alternative 2</u>	<u>GPR</u>	<u>PR</u>	<u>TOTAL</u>
<b>2001-03 REVENUE</b> (Change to Base)	-\$184,400	\$0	\$184,400
<i>[Change to Bill]</i>	<i>-\$184,400</i>	<i>\$0</i>	<i>-\$184,400</i>
<b>2001-03 FUNDING</b> (Change to Base)	\$0	-\$253,600	-\$253,600
<i>[Change to Bill]</i>	<i>\$0</i>	<i>-\$253,600</i>	<i>-\$253,600</i>

3. Take no action.

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