



## Legislative Fiscal Bureau

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

---

May 8, 2003

Joint Committee on Finance

Paper #170

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

[LFB 2003-05 Budget Summary: Page 65, #4]

---

#### **CURRENT LAW**

The Board of Commissioners of Public Lands (BCPL) is authorized to sell or exchange lands owned by any of the 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**

Increase the Board's statutory powers by authorizing the BCPL to invest monies that are in the balances of the common school fund, the normal school fund, the university fund or the agricultural college fund in the purchase of land in this state. Specify that the Board may not make such purchases unless the Governor requests that the BCPL purchase such land and the Board determines that such purchase would result in its per acre cost of managing the public lands and other lands being reduced. Under current law, the Board is authorized to invest such trust fund monies only 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.

#### **DISCUSSION POINTS**

1. In its budget request submittal 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, improved management of timber lands and better access to existing BCPL lands.

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

3. 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 may be made by the BCPL unless the Governor requests that the Board purchase the specific land and that the Board determines that the proposed purchase would reduce the per acre costs incurred by the BCPL in managing the public lands owned by the trusts and all other lands [lands purchased as investments] managed by the Board. There is no specification in the language of the bill regarding how such cost comparisons are to be made.

4. In additional information provided to the Committee by BCPL staff at its agency briefing session, more details were provided regarding the BCPL's goals and land purchase plans. In particular, this submittal provided more details about the Board's land consolidation plans. The Board's long-term plan is to consolidate its land holdings in a nine-county region in northeastern Wisconsin that it would be the Board's stated intent to hold for long-term ownership. That nine-county region consists of land in the following counties: Florence; Forest; Iron; Langlade; Lincoln; Marinette; Oneida; Price; and Vilas (see attachment). The Board's trust funds (primarily the normal school fund) own a total of 69,982 acres in those nine counties as shown in Table 1 below.

**TABLE 1**

**Existing Acres Owned in Nine-County Plan Area**

<u>County</u>	<u>Number of Acres</u>
Florence	2,911
Forest	17,894
Iron	6,816
Langlade	991
Lincoln	444
Oneida	22,463
Marinette	3,400
Price	9,207
Vilas	<u>5,856</u>
Total	69,982

5. Under the Board's consolidation plan, the BCPL would sell the 9,553 acres it owns in 32 other counties in primarily northwest, southwest, and south central Wisconsin. Those holdings by county are shown in Table 2 (also, see attachment). It would also sell about 4,000 acres of currently-owned land in the nine-county area above that the BCPL considers to be isolated tracts away from the Board's main holdings in those nine counties. It would also seek to exchange 7,500 acres with the U.S. Forest Service and other entities to consolidate and improve access to existing land holdings in the nine-county area. From the land sales, BCPL would use the proceeds to purchase lands adjacent to or within its tracts of land in the nine-county area that the BCPL already owns. The BCPL's goal would be to purchase approximately 25,000 acres of land in the nine-county area from willing sellers. The Board indicates that it expects that most of the lands that would be purchased would be corporate lands (such as those owned by timber companies or paper companies) that could be purchased from the owners in large tracts.

**TABLE 2**

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

<u>County</u>	<u>Acres</u>	<u>County</u>	<u>Acres</u>
Adams	120	Juneau	90
Ashland	2,173	LaCrosse	42
Barron	1	Monroe	40
Bayfield	276	Oconto	80
Buffalo	303	Pepin	37
Burnett	282	Pierce	78
Chippewa	120	Polk	26
Columbia	108	Portage	40
Crawford	52	Richland	4
Dodge	160	Rusk	160
Door	79	Sawyer	3,402
Douglas	434	Shawano	57
Dunn	325	Taylor	180
Eau Claire	40	Vernon	157
Grant	92	Washburn	436
Jackson	119	Wood	<u>40</u>
		Total	9,553

6. The BCPL has identified several objectives that it would be seeking as a result of this additional investment authority: (a) to improve its management efficiency in timberlands management by reducing its operating costs because of widely separated land holdings and increasing its access to currently-owned timberlands; (b) to increase its rate of return on investments by increasing the amount and quality of its harvestable timberlands; (c) to participate in the mitigation of the impact of forest fragmentation in northern Wisconsin; (d) to expand the BCPL's market niche of hardwood saw timber by obtaining increased stands of valuable hardwood trees; (e)

to enhance the BCPL's ability to serve as a "stewardship partner" with other public agencies in Wisconsin, such as the Department of Natural Resources and the U.S. Forest Service; and (f) to help preserve the northern Wisconsin industrial forest land base.

7. The BCPL argues that it would sell its existing land holdings only if the purchasers would be entities whose proposed use of the land would enhance the management of the forest resources. This would be in keeping with what BCPL states would be one of its goal in selling land, namely that the sale would not result in any "net loss of productive forestland."

8. A number of policy questions arise from this proposal in so far as the stated goals that the BCPL expects or hopes to achieve as a result of this requested expanded investment authority. The most fundamental policy issue would be the question of what the BCPL's appropriate responsibilities are. The Board of Commissioners of Public Lands is created by the State Constitution and is composed of the Attorney General, the Secretary of State and the State Treasurer. Further, under the State Constitution, the Board is expressly given the duty to sell the school and university lands that were given to the state by the federal government when the state entered the union. Most of those original granted 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 79,535 acres currently held in trust by the BCPL, almost 95% is held by the normal school fund and all but 37 acres of the remainder is held by the common school fund. The remaining 37 acres are held by the university fund.

9. The argument could be made that the BCPL was established and directed by the State Constitution to dispose of the lands the new state received through land grants from the federal government and then manage and invest the proceeds of those sales for the benefit of the respective trusts. Two of the four funds (the university fund and the agricultural college fund) are very small (balances \$234,100 and \$305,300 respectively as of June 30, 2002) and their principals do not grow. The interest earned on these funds is distributed to the University of Wisconsin. The normal school fund, which has the vast majority of the land holdings, is larger (balance of \$19,276,600 as June 30, 2002) and the interest earnings on this fund are sent to the University of Wisconsin for deposit to the general fund. Having a larger balance and substantial land holdings, this fund's principal can grow, although slowly, primarily through the revenues received from timber sales.

10. In contrast to these three other funds, the common school fund had a balance of \$477,056,700 as of June 30, 2002. 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 (4,175 acres), and as with the normal school trust fund, revenues from timber sales can add to the principal of the fund. However, this fund also has a much larger source of revenues which 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 such costs. Although this fund constitutes more than 96% of the total BCPL trust fund assets, it owns less than 4,200 acres of land, of which the BCPL would like to sell about one-third.

11. The BCPL's requested land purchase authority is for all four of the trust funds. However, from a land ownership perspective, it could be argued that this issue really affects primarily the normal school fund, particularly if the intent is to limit the purchase of new land to the use of proceeds of the proposed land sales. BCPL staff acknowledges that to the extent that the BCPL would limit its purchases of new land to the proceeds that come from sale of land already owned by the funds, this is really the normal school fund. Nonetheless, BCPL staff believes that the purchase of land authorization should apply to all of the funds. The question could be raised as to whether any initial purchase authority ought to be limited to assets from the normal school fund.

12. Notwithstanding the constitutional directive for the BCPL to sell the lands in the trusts for the benefit of trusts beneficiaries (the common schools, the normal schools, the university and the agricultural college), the BCPL apparently has a long history of exercising its fiduciary and statutory powers to withhold land from sale for the interests of the trust(s). BCPL staff point out that the BCPL has stated references dating from 1913 that have identified a Board position of withholding remaining trust lands from sale due to low market prices and when a Board determination is made that such action is in the beneficial interests of the trusts. A 1942 biennial report of the Board subsequently reinforced that earlier stated position.

13. Further, 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 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 harvest value to the BCPL and it is located outside the boundaries of any established state or county forest or park. This remains an adopted current policy position of the Board.

14. Further, notwithstanding the constitutional provision for the sale of its trust funds lands, there is 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.

15. Although the Board has apparently discussed this proposed land consolidation plan, there does not appear to be a written plan or policy statement that has been adopted by the Board. It could be argued that an endeavor of this magnitude would benefit from a detailed policy statement, followed by Board approval of a detailed staff plan. While it may be prudent not to initially identify

specific parcels that the BCPL desires to sell or acquire prior to the commencement of such sale or purchase activities, it could be argued that the Board should establish specific criteria that are to be met in considering individual sales or purchases, including such items as land value, transaction costs, appropriateness of a given sale or purchase pursuant to set criteria (for example: that sold land must be kept in public forests or have continued public access unless that is determined not feasible; or that purchased land must be within or contiguous to existing BCPL land in the nine-county master plan area and/or be determined to have an expected certain level of harvestable timber). The Committee could consider whether, if this expanded investment authority were to be granted, the Board should be required to adopt and maintain a formal policy document that details such criteria to guide the BCPL staff in its land sale and purchase activities as it undertakes this new initiative.

16. The Board currently has the authority to sell or exchange land. Under current law, the Board may only sell or exchange public lands at public auction, except for the following: (a) trust fund lands required for use by the federal government, other state agencies, local school districts, counties or municipalities in this state may be sold at the appraised value or exchanged for land of approximately equal value with those entities; (b) part or all of any existing parcel of any trust fund land may be exchanged for other land of approximately equal value, if the Board determines that the exchanges will contribute to the consolidation or completion of existing of currently-owned trust lands, or will enhance the conservation of the trust lands or will otherwise be in the public interest; or (c) trust fund lands located within or adjacent to federally recognized boundaries of Indian reservations may be sold to or exchange with any Indian tribes on those reservations or sold to or exchanges with the federal government for the benefit and use such tribes.

17. It could be argued that the Board's proposal should be developed further because of a number of potentially conflicting goals of the proposed consolidation plan and due to the number of policy areas that are not addressed by the language of the bill. In this regard, it may be noted that, at an Assembly Forestry Committee hearing on this plan, the Executive Director of the BCPL indicated, in response to a question about the seeming incompleteness of the plan, that the reason there was not more detailed language was because it was expected that the requested language would be deleted by the Governor or the Joint Finance Committee. Additional questions or concerns could be raised about a number of related issues that are not addressed by the language in the bill. Several of these are reviewed in the following discussion points.

18. Currently, earnings from timber harvests are credited to the principal of the trust fund (primarily the normal school fund). This increases the assets of the fund, but no immediate earnings are distributable to the direct beneficiaries of the trust (for the normal school fund, the general fund; for the common school fund, the public schools through school library aids) from such sales proceeds. To the extent that annual interest earnings on the normal school fund are lessened because some funds that could otherwise be allocated to investments with earnings returns rather are used as proceeds that serve to add to the principal of the fund, the amount transferred to the University of Wisconsin System for deposit to the general fund would be lessened. Similarly, reduced interest earnings in the common school fund that would occur by allocating assets to land investments so as to grow the principal of the fund would lessen the amount of interest earnings that

would be immediately available for distribution as school library aids.

19. The proposal does not seek to add land to the corpus of trust (that is, add land permanently to the trust fund land holdings). Rather, it would allow the BCPL to take a new form of assets of the funds (proceeds from land sales) and use those to make investments in land or in any of the other existing investment options available to the Board. There is no specification as to how long a period the BCPL would have to hold individual acquisitions under this approach. There would seem to be a potential conflict between the goal of acquiring land in the nine-county area as part of a plan for the Board to have long-term land holdings in the nine-county consolidation area and the goal of the addition of land purchases as supply another investment option under the objective of seeking those investments of trust funds assets which provide the greatest return. The nature of the investment returns on land investments as proposed by the Board that seek to add quality timberland to the trust fund assets are different from other investments where there is an annual return rate on the total assets invested. Timberland sales depend on periodic harvests (approximately every 12 to 14 years) of different stands of timber and the proceeds from those sales are added to the corpus of the trust to then be used for investment.

20. The BCPL has developed documentation as to the comparative return rates per acre on good timberland versus other investments. But it is important to note that that calculation depends on holding and managing that land over the long term. The BCPL says that is its goal. However, the current language does address whether the land must be purchased for long-term holdings or whether it would become a permanent part of the trust. It would be necessary to further develop land purchase language that would permit such land purchases only as permanent additions to the trust fund holdings ( perhaps subject to other general land sale authority) if this issue were to be addressed.

21. There is no provision in the language in the bill that deals with any requirement for the BCPL to have adopted a formal land consolidation plan before commencing the sale of existing land or the purchase of new land or for land exchanges.

22. The current proposal does not address the current statutory requirements regarding sale of existing trust lands which could affect the Board's ability to achieve the land sales results it desires. Those provisions include the requirements for sale of all land (with the exceptions noted earlier) at public auction and in individual tracts. These provisions apparently date from the early times when the large blocs of land received from the federal government were put up for public sale. It could be argued that a more complete proposal for statutory change would have addressed these issues as well.

23. Concerns have been expressed about the impact on local property tax bases in the target nine-county consolidation area if large amounts of now privately-owned land are taken off the property tax rolls. Suggestions have been made that provision should be made for some type of payment in lieu of taxes to local governments for any land that the BCPL would purchase or for continued payments under managed forest law program type provisions for land that is currently enrolled in that program. The impact of such payments on fund earnings would then also be a

related consideration to be addressed, since such payments would presumably be on-going. None of these issues is addressed in the current language of the bill.

24. Under the proposed language in SB 44 there is no statutory language or other guidance regarding any definition of the time period for which the supposed long-term holdings of the new land acquisitions in the nine-county area are to be held or the conditions under which the Board could, in the future, choose to dispose of its new land holdings in that area.

25. If, as stated by the BCPL, another purpose of the proposed authority to purchase land is to have the BCPL actively involved through its land purchases in protecting northern forest lands from further fragmentation and in furthering DNR's land protection activities under the stewardship program, then it would seem that there should be some statutory guidance to the BCPL in that regard as a part of the requested authorization to purchase land. There is no provision in the bill language that would address the need for the BCPL and DNR to work together in a coordinated way with regard to furthering stewardship program objectives. Similarly, the bill does address the need for there to be some specification as to how the two agencies are to work together to coordinate their activities with regard to land purchase activities and other forest management activities aimed at ameliorating forest fragmentation in northern Wisconsin.

26. Under DNR's stewardship program, there are provisions for legislative review by the Joint Committee on Finance of land purchases under the stewardship program. Under that program, any proposed project that would have a cost exceeding \$250,000 must first be reviewed by the Joint Committee on Finance under a 14-day passive review process. The Committee might well have a concern regarding whether a comprehensive legislative proposal with regard to substantially BCPL land purchases might not warrant some such review provision also.

27. The Committee could make a basic decision on whether it supports at this time 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. The Committee could approve the Governor's recommendation as submitted or it could choose to maintain current law.

28. Alternatively, the Committee could take the view that while the proposal for a master land consolidation effort by the BCPL may have merit, it should be considered only in the context of a fully developed legislative proposal that address all of the related statutory and programmatic issues, including those outlined above. To give impetus to such activity, the Committee could adopt session law language directing the Board to develop a comprehensive legislative draft that addresses all of the potential issues that are encompassed by this proposed consolidation plan and its related stated objectives and to submit such draft legislation to the Joint Committee on Finance, and the standing committees in each house of the Legislature that deal with forestry and/or trust land issues, by January 1, 2004.

## **ALTERNATIVES**

1. Approve the Governor's recommendation.



2. Adopt session law language directing the Board to develop a comprehensive legislative draft that addresses all of the potential issues that are encompassed by this proposed consolidation plan and its related stated objectives and to submit such draft legislation to the Joint Committee on Finance, and the standing committees in each house of the Legislature that deal with forestry and/or trust land issues, by January 1, 2004.

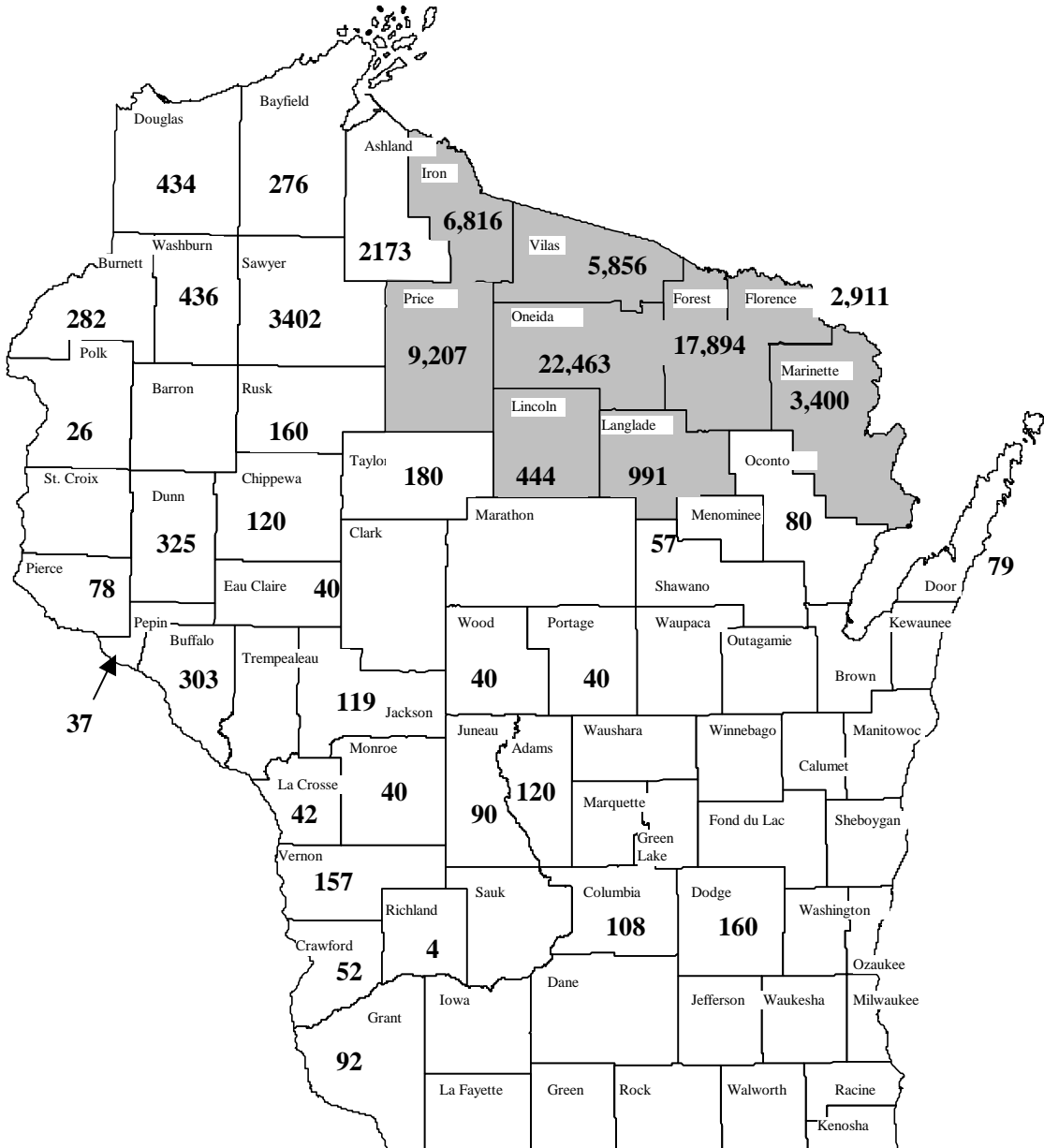
3. Maintain current law.

Prepared by: Terry Rhodes  
Attachment



# ATTACHMENT

## Currently Owned Acres of Trust Lands by County



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