



Douglas La Follette, *Secretary of State*
Matt Adamczyk, *State Treasurer*
Brad D. Schimel, *Attorney General*

101 E. Wilson Street
2nd Floor
PO Box 8943
Madison, WI 53708-8943

608 266-1370 INFORMATION
608 266-0034 LOANS
608 267-2787 FAX
bcpl.wisconsin.gov

Tom German, *Acting Executive Secretary*

AGENDA

September 15, 2015
2:00 P.M.

Board of Commissioners of Public Lands
101 E. Wilson Street, 2nd Floor
Madison, Wisconsin

Routine Business:

- 1) Call to Order
- 2) Approve Minutes – September 1, 2015 (Attachment)
- 3) Approve Loans (Attachment)

Old Business:

- 4) Discuss Report on Common School Fund Revenue and Unclaimed Property
- 5) Discuss Candidate(s) for Executive Secretary Position

New Business:

- 6) Discuss and Vote on American Deposit Management Proposal (Attachment)
- 7) Discuss Legality of Timber Revenue Sharing with Counties (Attachments)

Routine Business:

- 8) Future Agenda Items
- 9) Acting Executive Secretary's Report
- 10) Adjourn

AUDIO ACCESS INFORMATION

Toll Free Number: **(888) 291-0079**
Passcode: **6363690#**

**BOARD MEETING
SEPTEMBER 15, 2015**

**AGENDA ITEM 2
APPROVE MINUTES**

Attached for approval are the minutes from the September 1, 2015, board meeting.

Board Meeting Minutes
September 1, 2015

Present were:

- | | |
|--|--|
| Doug La Follette, Commissioner | Secretary of State |
| Matt Adamczyk, Commissioner | State Treasurer |
| Brad Schimel, Board Chair | Attorney General |
| Tom German, Acting Executive Secretary | Board of Commissioners of Public Lands |
| Vicki Halverson, Office Manager | Board of Commissioners of Public Lands |
| Denise Nechvatal, Accountant | Board of Commissioners of Public Lands |
| Richard Sneider, Loan Analyst | Board of Commissioners of Public Lands |
| Randy Bixby, Land Records Archivist | Board of Commissioners of Public Lands |

ITEM 1. CALL TO ORDER

Board Chair Schimel called the meeting to order at 2:02.

ITEM 2. APPROVE MINUTES – AUGUST 19, 2015

MOTION: Commissioner La Follette moved to approve the minutes; Board Chair Schimel seconded the motion.

DISCUSSION: None.

VOTE: Commissioner La Follette and Board Chair Schimel voted aye; Commissioner Adamczyk abstained. The motion passed 2-1.

ITEM 3. APPROVE LOANS

Board Chair Schimel asked if the loans had been reviewed for public purpose. Acting Executive Secretary German confirmed they had.

Municipality	Municipal Type	Loan Type	Loan Amount
1. Albany Green County Application #: 02016051 Purpose: Finance capital projects	Village Rate: 3.25% Term: 8 years	General Obligation	\$200,000.00
2. Cumberland Barron County Application #: 02016044 Purpose: Finance sanitary sewer projects	City Rate: 3.00% Term: 5 years	General Obligation	\$52,000.00
3. Fairwater Fond Du Lac County Application #: 02016043 Purpose: Finance fire truck	Village Rate: 3.00% Term: 5 years	General Obligation	\$75,000.00

4.	Hartland-Lakeside J3 Waukesha County Application #: 02016054 Purpose: Refinance 2005 Refunding Bonds	School Rate: 2.50% Term: 1 years	General Obligation	\$1,205,000.00
5.	Kekoskee Dodge County Application #: 02016053 Purpose: Finance sewer project	Village Rate: 2.50% Term: 2 years	General Obligation	\$200,000.00
6.	La Crosse La Crosse County Application #: 02016059 Purpose: Refinance solid waste bonds, series 2006A	County Rate: 4.00% Term: 10 years	Utility Revenue	\$5,475,000.00
7.	Maxville Buffalo County Application #: 02016058 Purpose: Finance road project	Town Rate: 2.50% Term: 2 years	General Obligation	\$50,000.00
8.	Pewaukee Waukesha County Application #: 02016052 Purpose: Finance property acquisition	Village Rate: 3.75% Term: 20 years	General Obligation	\$528,800.00
9.	Pewaukee Waukesha County Application #: 02016055 Purpose: Finance blighted property remediation	Village Rate: 3.75% Term: 20 years	General Obligation	\$200,000.00
10.	Verona Dane County Application #: 02016057 Purpose: Finance TID #6 project	City Rate: 3.25% Term: 10 years	General Obligation	\$700,000.00
11.	Wausau Marathon County Application #: 02016056 Purpose: Finance utility improvements	City Rate: 3.25% Term: 10 years	General Obligation	\$4,000,000.00
12.	Woodville St Croix County Application #: 02016045 Purpose: Finance street and park projects, build salt shed	Village Rate: 3.75% Term: 20 years	General Obligation	\$429,677.00
13.	Woodville St Croix County Application #: 02016046 Purpose: Finance TID #3 projects	Village Rate: 3.25% Term: 8 years	General Obligation	\$224,239.00

14.	Woodville St Croix County Application #: 02016047 Purpose: Finance TID #4 projects	Village Rate: 3.75% Term: 18 years	General Obligation	\$177,500.00
15.	Woodville St Croix County Application #: 02016048 Purpose: Refinance BCPL loan #2014086.02	Village Rate: 3.75% Term: 19 years	General Obligation	\$108,766.74
16.	Woodville St Croix County Application #: 02016049 Purpose: Refinance BCPL loan #2014086.01	Village Rate: 3.75% Term: 18 years	General Obligation	\$474,252.10
TOTAL				\$14,100,234.84

MOTION: Commissioner La Follette moved to approve the loans; Board Chair Schimel seconded the motion.

DISCUSSION: None.

VOTE: The motion passed 3-0.

ITEM 4. DISCUSS REPORT ON COMMON SCHOOL FUND REVENUE AND UNCLAIMED PROPERTY. Potential board vote regarding request for audit of 1) Office of Commissioner of Insurance fines and forfeitures; and 2) Unclaimed Property Program revenue and expenses

Board Chair Schimel said the agenda item had been carried over from a previous board meeting.

MOTION: Commissioner La Follette made the following motion, which was included in the Board’s packet:

The Board of Commissioners of Public Lands requests that the Legislative Audit Bureau conduct a performance audit of:

- the activities involving fines and forfeitures from the Office of the Commissioner of Insurance for the past four years; and
- the activities involving the Unclaimed Property Program, all revenues and expenses of the program for the last two years to ensure that it has been administered in compliance with the state constitution including an accounting of all the hours spent by the State Treasurer and his staff and what activities these hours involved.

Board Chair Schimel seconded the motion for discussion purposes.

DISCUSSION: Commissioner La Follette said the Unclaimed Property is an important source of funds [for the Common School Fund] and an audit of the program would provide the Board with an analysis of why the revenues have declined. Board Chair Schimel asked Acting Executive Secretary Tom German if there was an explanation for the fluctuations in those deposits. Mr. German explained how demutualization of insurance companies and savings and loans had impacted the Unclaimed Property deposits in prior years. In addition, administration of the program was transferred from the State Treasurer’s Office to the Department of Revenue (DOR). The BCPL and DOR had executed a Memorandum of Understanding outlining how DOR would calculate their expenses, project future claims, and how much would be transferred to the Common School Fund. During the past year, DOR deviated from the formula and determined an additional \$23 million would need to be

retained for potential claims. In addition, the DOR increased their expenses for managing the program by \$290,000 from the previous year but provided no explanation for the increase.

Commissioner Adamczyk said Commissioner La Follette could send a letter to the Legislative Audit Committee co-chairs if he had concerns but he was not in favor of the motion. Commissioner La Follette said it was appropriate for the Board to request such an audit because they have a fiduciary responsibility to ensure that the Common School Fund receives the Unclaimed Property monies.

Commissioner Adamczyk said BCPL staff could work with DOR and the Office of Commissioner of Insurance (OCI) to obtain more information rather than involving the Legislative Audit Bureau. Mr. German replied that staff had been in contact with the two agencies. OCI had not yet provided additional information and DOR had sent a report that had just been received the Friday before the board meeting.

Board Chair Schimel said he wanted more time to obtain additional information and research the logistics of one state agency asking for an audit of another state agency.

MOTION: Board Chair Schimel moved to table the agenda item; Commissioner Adamczyk seconded the motion.

VOTE: The motion passed 2-1. Board Chair Schimel and Commissioner Adamczyk voted aye; Commissioner La Follette voted no.

ITEM 5. DISCUSS CANDIDATE(S) FOR EXECUTIVE SECRETARY POSITION

Board Chair Schimel said he had received a cover letter and resume from only one interested candidate. He reminded the other Commissioners that they had agreed at a past meeting that interested candidates should send a cover letter and resume to his attention.

ITEM 6. DISCUSS AND VOTE ON OUT OF STATE TRAVEL: 2015 Schwab Impact Conference

Acting Executive Secretary German requested that the Board approve his and Richard Sneider's attendance at an upcoming financial conference to be held in Boston in November. With the Board transitioning to Prudent Investor Standard he felt it was important for staff to attend.

Commissioner Adamczyk questioned the need for two staff to attend. Mr. German said that given the number of concurrent sessions, sending two staff allows the opportunity for more information to be obtained and shared between them. Board Chair Schimel felt it was important to have staff fully informed.

MOTION: Board Chair Schimel moved to fund Tom German and Richard Sneider's attendance at the conference; Commissioner La Follette seconded the motion.

VOTE: The motion passed 2-1. Board Chair Schimel and Commissioner La Follette voted aye; Commissioner Adamczyk voted no.

ITEM 7. FUTURE AGENDA ITEMS

Commissioner La Follette requested that the Unclaimed Property topic and any research results by DOJ and BCPL staff be added to a future agenda. Board Chair Schimel replied it would be added to the next agenda.

Board Chair Schimel said he had received legal conclusions relating to whether or not the Board could engage in revenue sharing with the Counties or other entities and said that would be included on the next agenda.

ITEM 8. ACTING EXECUTIVE SECRETARY'S REPORT

Acting Executive Secretary German reported that demand for State Trust Fund Loans was very high; approximately \$75 million in loan applications were in the "pipeline" at this time compared to \$15 million at this time last year. It was unknown whether the trend would continue but staff would monitor it.

Mr. German reported there was no additional information on the Bucks arena financing but DOA Capital Finance may have information on the structure of the debt offerings in the near future. Mr. German said any information received would be reported to the Board.

Mr. German reported that staff are concluding their due diligence on the American Deposit Management investment proposal and would present the information to the Board at the next meeting.

Mr. German said he would be contacting the Commissioners' offices regarding an open records request relating to emails received on the topic of climate change and global warming.

He concluded his report saying that staff continues to speak at county unit meetings hosted by the Wisconsin Towns Association.

ITEM 9. ADJOURN

MOTION: Board Chair Schimel move to adjourn; Commissioner Adamczyk seconded the motion.

The meeting adjourned at approximately 2:40 PM.



Thomas P. German, Acting Executive Secretary

These minutes have been prepared from a recording of the meeting. The summaries have not been transcribed verbatim. Link to audio recording: ftp://doaftp1380.wi.gov/doadocs/BCPL/2015-09-01_BCPL-BoardMtgRecording.mp3

**BOARD MEETING
SEPTEMBER 15, 2015**

**AGENDA ITEM 3
APPROVE LOANS**

Municipality	Municipal Type	Loan Type	Loan Amount
1. Altoona Eau Claire County Application #: 02016067 Purpose: Finance TID #3 infrastructure projects	City Rate: 4.50% Term: 14 years	TID Revenue	\$8,541,307.00
2. Clayton Winnebago County Application #: 02016069 Purpose: Purchase land and building	Town Rate: 3.00% Term: 3 years	General Obligation	\$170,000.00
3. Eagle Waukesha County Application #: 02016060 Purpose: Finance road reconstruction	Town Rate: 3.00% Term: 5 years	General Obligation	\$200,000.00
4. Ellington Outagamie County Application #: 02016063 Purpose: Purchase grabage and recycling carts	Town Rate: 2.50% Term: 2 years	General Obligation	\$100,000.00
5. Marathon City Marathon County Application #: 02016068 Purpose: Finance TID #1 projects and development	Village Rate: 3.25% Term: 10 years	General Obligation	\$500,000.00
6. Menasha Calumet and Winnebago Counties Application #: 02016064 Purpose: Refinance BCPL loan #2013010	City Rate: 3.75% Term: 12 years	General Obligation	\$11,180,853.03
7. Menasha Calumet and Winnebago Counties Application #: 02016065 Purpose: Refinance BCPL loan #2014032	City Rate: 3.75% Term: 18 years	General Obligation	\$768,633.79

Municipality	Municipal Type	Loan Type	Loan Amount
8. Onalaska La Crosse County Application #: 02016062 Purpose: Finance road culvert replacement	Town Rate: 3.25% Term: 10 years	General Obligation	\$519,821.30
9. River Falls Pierce and St Croix Counties Application #: 02016066 Purpose: Finance property purchase	City Rate: 3.25% Term: 10 years	General Obligation	\$300,000.00
10. Springvale Fond Du Lac County Application #: 02016061 Purpose: Purchase plow/truck	Town Rate: 2.50% Term: 2 years	General Obligation	\$60,000.00
	TOTAL		\$22,340,615.12

**BOARD MEETING
SEPTEMBER 15, 2015**

**AGENDA ITEM 6
DISCUSS AND VOTE ON AMERICAN DEPOSIT MANAGEMENT PROPOSAL**

**PROPOSED SHORT TERM CASH RESERVE INVESTMENT IN
FEDERALLY INSURED SAVINGS ACCOUNTS
THROUGH AMERICAN DEPOSIT MANAGEMENT**

RECITALS

- A. The financial assets of the Trust Funds managed by the Board of Commissioners of Public Lands are primarily invested in: Loans to Municipalities and School Districts under the State Trust Fund Loan Program; and State, Municipal and Farm Credit Bonds. Any trust funds not otherwise invested in loans or bonds are held in the State Investment Fund (“SIF”).
- B. The SIF is a money market fund managed by the State of Wisconsin Investment Board (“SWIB”). The SIF is used by state agencies, local governments and school districts as a relatively safe place to invest short term cash reserves that will be needed or otherwise withdrawn within the coming year.
- C. Although the SIF is invested in high grade short term instruments, the fund is not federally insured. Federal insurance is available for bank and credit union savings accounts of \$250,000 or less.
- D. The annualized rate of return on the SIF is currently 0.13%. SIF’s annualized rate of return has not exceeded 0.14% in more than 2 years.
- E. BCPL currently has more than \$153 Million of short term cash reserves held in the SIF, including approximately \$52 Million that has been set aside for Trust Fund Loans applications that have not yet been funded.
- F. American Deposit Management Company (“ADM”) is a company headquartered in Delafield, Wisconsin with offices in Texas and Arizona serving public entities throughout the US. ADM is regulated by the SEC and offers a program whereby depositors can set up a single account that is in turn broken down into smaller amounts of less than \$250,000 and invested in a number of banks and credit unions so that the entire deposit remains federally insured. Attached Exhibit A offers a brief description of the ADM program.
- G. ADM is offering BCPL a net rate of return of 0.25% on all of BCPL’s cash deposits up to a limit of \$40 million.

- H. By investing a portion of Trust Fund cash reserves in the ADM program, BCPL would nearly double the rate of return on these investments and increase expected annual Trust Fund earnings on these reserves by nearly \$50,000. In addition, these funds would obtain the protection of federal insurance. BCPL cash management would become slightly more complicated as access to these funds would be delayed by one day (as compared to SIF), but staff is confident that procedures can be established so that there is absolutely no disruption in BCPL operations.
- I. The ADM program is recognized as a “public depository” under Wisconsin Statutes Section 34.05, and a number of Wisconsin municipalities and school districts are using the program.
- J. For the reasons outlined above, BCPL staff recommends that the Board authorize BCPL staff to invest up to \$40 million of trust fund moneys in ADM’s federally insured deposit program.

RESOLUTION AUTHORIZING THE AMERICAN DEPOSIT MANAGEMENT CO. AS A DESIGNATED DEPOSITORY FOR STATE FUNDS

WHEREAS, the WISCONSIN BOARD OF COMMISSIONERS OF PUBLIC LANDS may deposit funds in one or more banks as outlined by Wisconsin State Statutes; and

WHEREAS, the WISCONSIN BOARD OF COMMISSIONERS OF PUBLIC LANDS desires to designate the AMERICAN DEPOSIT MANAGEMENT COMPANY-DELAFIELD, WI as AUTHORIZED DEPOSITORY FOR STATE FUNDS; and

WHEREAS, the AMERICAN DEPOSIT MANAGEMENT CO. is a QUALIFIED DEPOSITORY FOR THE PURPOSES OF THE DEPOSIT OF PUBLIC FUNDS;

NOW THEREFORE, BE IT RESOLVED that the Commissioners for and on behalf of the WISCONSIN BOARD OF COMMISSIONERS OF PUBLIC LANDS authorizes the deposit of up to FORTY MILLION DOLLARS (\$40,000,000.00) and withdrawal of monies with the AMERICAN DEPOSIT MANAGEMENT CO. in accounts insured by the FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC) and/or NATIONAL CREDIT UNION ASSOCIATION (NCUA) in compliance with applicable state law and regulations;

BE IT FURTHER RESOLVED that the following BCPL staff members or their successors are authorized to order the deposit and/or withdrawal of monies with the AMERICAN DEPOSIT MANAGEMENT CO. until this Authority is revoked by action of the WISCONSIN BOARD OF COMMISSIONERS OF PUBLIC LANDS and written notice of such action is received by the AMERICAN DEPOSIT MANAGEMENT CO.

Thomas P. German
Richard Sneider
Denise Nechvatal

AMERICAN MONEY MARKET ACCOUNT (AMMA)[™]

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If you have deposits at a single financial institution, in a single ownership capacity, then you have access to only \$250,000 in deposit insurance at that financial institution. AMMA[™], The American Money Market Account, is a safe, convenient way to protect deposits that exceed \$250,000¹.

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How AMMA[™] Works



AMMA[™] Custodial Deposit \$1,000,000

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★★ Three Easy Steps ★★

- 1. GET STARTED:** Simply complete our application, sign our agreement and provide a few supporting documents².
- 2. TRANSFER YOUR FUNDS-WE DO THE REST:** You wire funds into your new AMMA account. Your deposit is dispersed into our network of select financial institutions.
- 3. RECEIVE MONTHLY E-STATEMENTS:** You receive a monthly e-statement that includes all account activity, interest earned and a detailed listing of your deposits at each network financial institution.

Safety and Liquidity

Access through our exclusive network of pre-screened financial institutions gives you up to \$40 million of FDIC/NCUA deposit insurance – and with twice per week withdrawals³, AMMA[™] gives you the flexibility needed to manage your cash.

- All deposits are fully insured by the FDIC/NCUA, which allow for the full faith and credit of the U.S. Government¹
- In-network financial institutions meet our premium standards of stability and rating

Convenience

Using AMMA[™] relieves the burden of tracking collateral, negotiating repurchase agreements and managing multiple bank account relationships. You will receive one easy-to-read monthly e-statement that includes your deposit and withdrawal activity, interest earned, and a detailed listing of your deposits at each network financial institution.

In addition, AMMA[™] offers:

- No transaction fees
- No term commitment on your deposits
- No minimum balance requirement

Return

AMMA[™] offers a highly competitive rate of return when compared to: Certificates of Deposit, Commercial Paper, Money Market Mutual Funds and US Agencies and Treasuries.

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AMERICAN MONEY MARKET ACCOUNT (AMMA)[™]

★★ About ADM ★★

American Deposit Management (ADM) is a national award-winning treasury management and financial services company. With over 20 years of experience, ADM is your one source for industry leading cash management and financial services dedicated to investing and servicing financial institutions around the country.

ADM has successfully performed a broad range of services for a wide variety of clients nationwide. We believe clients merit exemplary, cost-effective solutions with strong results.

- MSRB Registered Municipal Advisor
- Proudly working with 600+ financial institutions across the U.S.
- ADM's team of professionals includes former bank executives, certified treasury professionals, regulatory and tax attorneys, certified public accountants and audit managers
- Over \$3 billion in funds managed and distributed
- Offices in Wisconsin, Texas, Arizona and Minnesota

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RATING AGENCY OPINION

In a notice on February 21, 2011, Standard & Poor's Senior Director included the following statement⁵:

"We evaluated several insured bank deposit programs and in our opinion, for our Principal Stability Fund Ratings or 'PSFRs' (i.e. AAAM), we view the credit risk of these programs as equal to the U.S. Government sovereign credit rating (currently 'AAA'), as deposits in these programs are FDIC insured up to the \$250,000 maximum amount per bank."

Important Disclosures

AMMA[™] satisfies the FDIC and NCUA's requirements for agency pass-through deposit insurance coverage.

Custodial banks are not affiliated with American Deposit Management, LLC and are not responsible for, and do not guarantee the products, services or performance of its affiliates and third party providers.

The American Deposit Management Co. is a brand identity of American Deposit Management, LLC, a leading consulting, treasury management and financial services organization. The American Deposit Management Co. is a municipal advisor registered with the Municipal Securities Rulemaking Board #K0353. No information contained herein should be considered investment advice. Registration with the MSRB does not imply a particular level of skill or training.

1 The Federal Deposit Insurance Corporation (FDIC) and National Credit Union Association (NCUA) are independent agencies of the U.S. Government that protect the funds depositors place in FDIC/NCUA insured institutions. AMMA[™] is not a member of FDIC or NCUA, but the banks and credit unions where your money is deposited are FDIC and NCUA members. FDIC/NCUA deposit insurance is backed by the full faith and credit of the U.S. Government.

2 You must enter into an agency agreement with The American Deposit Management Co. before funds can be accepted for deposit. The agreement contains important information and conditions regarding the acceptance of funds. We require an exclusion list of the institutions where you already hold deposits to avoid duplication and ensure your funds have complete FDIC/NCUA insurance.

3 Access to funds is limited to twice per week and six total per month. Please read the Program Terms and Conditions for detailed withdrawal and settlement dates.

4 Current yield and maximum FDIC/NCUA insurance coverage is indicative for AMMA[™] and may change without notice due to changes in market or business conditions.

5 Standard & Poor's maintains a separation of commercial and analytical activities. Information provided from Standard & Poor's was from analysis on a program that functions similar to AMMA[™] but has no relationship to AMMA[™].

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**BOARD MEETING
SEPTEMBER 15, 2015**

**AGENDA ITEM 7
DISCUSS LEGALITY OF TIMBER REVENUE SHARING WITH COUNTIES**

The following documents have been provided for discussion of this agenda item:

- **Attachment A:** July 21, 2015, memo from Assistant Attorney General Maria Lazar
- **Attachment B:** Email correspondence between Tyler Wenzlaff (Office of Senator Tom Tiffany) and Larry Konopacki (Wisconsin Legislative Council)

CORRESPONDENCE/MEMORANDUM

DEPARTMENT OF JUSTICE

Item 7
Attachment A
Page 1 of 4

Date: July 21, 2015

To: Andrew C. Cook
Deputy Attorney General

David V. Meany
Administrator, Division of Legal Services

Charlotte Gibson
Director, Special Litigation and Appeals Unit

From: Maria S. Laza 
Assistant Attorney General

Subject: Management and sale profits: Board of Commissioner of Public Lands

BACKGROUND:

Pursuant to Wis. Const. Art. X, § 7, the Board of Commissioners of Public Lands (the "Board") consists of the Secretary of State, the State Treasurer and the Attorney General and it is authorized to oversee the management, sale and investment of any profits from the sale of public land. A school fund was created to be funded by the proceeds of all lands granted to the state from the United States for educational purposes. Wis. Const. Art. X, § 2.

The Board is authorized to grant leases of any public lands, Wis. Stat. § 24.39(1), sell parts of any public land, Wis. Stat. § 24.11, and sell standing live timber on any public land. Wis. Stat. § 24.39(1). In the course of its fiduciary duties, the Board may deduct "all expenses necessarily incurred in caring for and selling public lands" "from the gross receipts of the fund to which the proceeds of the sale of the land will be added." Wis. Stat. § 24.04(2). "Expenses necessarily incurred" have been statutorily itemized to include:

expenses for reforestation, erosion and insect control, submerged log monitoring, surveys, appraisals, soil surveys and soil mapping activities and other land management practices that serve to protect or enhance the interests of the beneficiaries of the trust funds.

Wis. Stat. § 24.04(2).

The Board is contemplating a management contract with the Oneida and Forest County forest administrators to manage some of the school fund trust lands located within those forests. The Secretary of State has proposed a sharing of the revenue/profits from the sale

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of timber within those school fund trust lands in addition to paying the actual management costs by the two County forest administrators. Two issues concerning that proposal have arisen.

ISSUES:

1. May the Board share revenues from the sale of timber located on school fund trust lands with the forest administrators?
2. What type of oversight is required to ensure that the Board's role as trustees and custodians with an undivided loyalty to trust beneficiaries is not compromised or diminished by such delegation?

RESPONSES:

1. No. The Board may not share revenues with any other entity because the statutes require that all funds received from sale or lease of public lands or sale of timber on public lands be paid to the general school fund.
2. The Board owes the standard duties of any fiduciary and must ensure appropriate oversight of any delegation of management duties.

DISCUSSION:

1. Revenue sharing.

Each and every reference to the revenue or profit derived from the sale or lease of public lands, or the sale of standing timber on public lands expressly states that "all monies" shall be paid to the state. Moreover, the sole reference to the sale of standing live timber is followed by a sentence that provides: "Such easements, leases, licenses and sales shall be made only for a full and fair consideration *paid or to be paid to the state, . . .*" Wis. Stat. § 24.39(1). Given the placement in the statute and the use of the canons of statutory construction, it is apparent that the revenue from the "sale of standing live timber" must be paid to the state. There is no ambiguity in the statute. Its plain language controls.

A review of case law on the topic produced no cases that discussed the disposition of revenue from timber on public lands, nor did it evidence an authorization to deviate from the statutory terms. The only legal authority is contained within six formal Attorney General Opinions dating back to 1922. The holdings of those Opinions is summarized as follows:

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- 10 Op. Atty. Gen. 985 (1921) – the Board may use funds from the general fund to pay the necessary expenses incurred in caring for and selling public lands. *Id.* at 987. (This mirrors the statutes).
- 11 Op. Atty. Gen. 90 (1922) – the Board may sell dead and down timber on state lands.
- 16 Op. Atty. Gen. 630 (1927) – the Board has authority to sell timber from public school lands. In determining whether to sell the timber, the Board may consider “the hazards of trespass, storms, storms made more hazardous because of the removal of surrounding timber, fires, changes in value of timber due to the building or removal of means of transportation, etc.” *Id.* at 631.
- 17 Op. Atty. Gen. 516 (1928) – the Legislature may not make investment recommendations or create a separate investment board/entity. The Board has the “*undivided duty*” to take possession of and control all funds for investment purposes. *Id.* at 520. The handling and investment of the state school funds may not be transferred or delegated to any other officer or board. *Id.*
- 20 Op. Atty. Gen. 1265 (1931) – Board commissioners may sell timber to another state department at the appraised value without advertising and public sale.
- 65 Op. Atty. Gen. 207 (1976) – this Opinion covered a range of topics, but it concluded with a paragraph on the fiduciary duties of the Board members. It provides:

The commissioners of public lands have a constitutional duty to act as trustees in the sale of school and university lands for the exclusive benefit of the State School Fund, Art. X, sec. 7, Wis. Const. This duty necessarily implies an obligation to maximize the financial benefit from the sale of such lands or interest in such lands. Thus, where the law regarding public lands is uncertain, as it seems to be with regard to the reservation of real property rights, the commissioners are required by law, despite any natural and unavoidable sympathy for the private property owners, to advance that reasonable legal interpretation most favorable to the interests of the school fund. *Id.* at 228.

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In conclusion, the statutes (and Attorney General Opinions) are clear that "all expenses necessarily incurred in caring" for the public lands can be paid by the Board. Accordingly, a management contract could be entered into with the Oneida and Forest County forest administrators to manage these forests. But, there is no authority for the Board to take revenue that is owed to the public school fund trust beneficiaries and share it with non-beneficiaries. To do so would be to compromise the fiduciary duty owed to the beneficiaries.

2. Fiduciary duties.

Given the admonition of the 1976 Attorney General Opinion, that the Board must "advance that reasonable legal interpretation most favorable to the interests of the school fund;" 65 Op. Atty. Gen. 207, 228 (1976), it is clear that the Board members must act with all of the general duties of a fiduciary and must ensure that any delegation of management duties are carefully overseen.

CONCLUSION:

The Board of Commissioners of Public Lands may not share the revenues derived from a sale of timber from public school trust lands with any entity of individual. All proceeds must be paid to the state and placed in the public school fund, to be invested at the discretion of the Board. The proposal to include a share of the timber sale revenues in the management proposals would violate both the spirit and letter of the law. All that can be paid to the forest administrator are those expenses necessarily incurred in caring for the forest land.

A transfer of any of the Board's management duties must be drafted in such a way to ensure that the Board maintains sufficient oversight in order to satisfy the constitutional fiduciary duties inherent in the Board.

Cook, Andrew C

Item 7
Attachment B
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From: Wenzlaff, Tyler [Tyler.Wenzlaff@legis.wisconsin.gov]
Sent: Wednesday, July 22, 2015 2:54 PM
To: Cook, Andrew C
Subject: FW: Management of BCPL

Andy,

Sen. Tiffany asked that I forward this to you. Let me know if you have any questions.

Tyler

Tyler Wenzlaff
Office of Wisconsin State Senator Tom Tiffany
12th Senate District
608-266-2509
[facebook.com/WISateSenTomTiffany](https://www.facebook.com/WISateSenTomTiffany)

From: Konopacki, Larry
Sent: Thursday, May 14, 2015 2:02 PM
To: Wenzlaff, Tyler
Subject: RE: Management of BCPL

Hi Tyler, the following information was researched by Zach Ramirez in our office. Let either of us know if you have any questions.

The Wisconsin Constitution constrains the Legislature's authority over 1) BCPL's properties, and 2) BCPL itself. As long as the Legislature is able to assign counties the responsibility of managing BCPL properties in a way that does not violate any of these constraints, it is likely that the Legislature would be constitutionally permitted to do so. However, making this assignment without violating the constraints would likely be complex.

1) Regarding the properties:

The Legislature is prohibited from using the properties or money resulting from the properties for any purposes except the purposes identified in article X, section 2 of the constitution, which are to **support common schools, academies, normal schools, and libraries**. Therefore, the Legislature would have to make provisions to ensure that the money resulting from county management of the properties was still used to support the purposes listed in the constitution.

2) Regarding BCPL:

Managing BCPL's properties includes several discrete functions, and each function brings with it distinct constitutional constraints on the Legislature's authority to transfer responsibility for that function to the counties. Article X, section 7 of the Wisconsin Constitution authorizes BCPL to A) sell its properties, B) withhold the properties from sale, and C) invest revenue arising from the properties. Section 24.52, Wis. Stats., grants BCPL "such further powers as may be necessary or convenient to enable it to exercise the functions and perform the duties imposed upon it by law." And, s. 24.39(1), Wis. Stats., authorizes BCPL to sell timber from BCPL properties.

Although the constitution prohibits the Legislature from removing BCPL's authority over the functions listed in the constitution, the constitution permits the Legislature to place conditions on BCPL's exercise of these functions. For example,

- The Legislature may direct methods by which properties are offered for sale, and the Legislature has done so by requiring public sale and advertised bid (s.24.09 (1) (d), Wis. Stats.), and prohibiting BCPL from selling the properties to BCPL employees and board members (s.24.56, Wis. Stats).
- The Legislature may limit the types of investments that BCPL may make, and the Legislature has done so in s. 24.61(2) (a), Wis. Stats.
- The Legislature may direct the manner in which timber is sold from BCPL properties, and the Legislature has done so in s. 24.39(1), Wis. Stats., which provides that "All sales of standing live timber shall be on a selective cutting basis in line with federal forest practices," and "sales shall conform to the requirements, so far as applicable, prescribed by ch. 26 for the exercise of the department of natural resources of similar powers affecting state park lands and state forest lands."

If the Legislature's intent is to require that management of BCPL properties mirrors certain county forest land management practices, it could probably direct that the BCPL adhere to those practices in its management. Because the constitution requires that money received from management of BCPL properties go to certain purposes regardless of whether the properties are managed by BCPL or other entities, such as counties, the effect of transferring responsibility would be limited to making management of BCPL lands consistent with county practices. The Legislature could potentially achieve this outcome without a direct transfer. For example, if the Legislature wanted BCPL's sale of timber to mirror the methods of sale conducted by counties, it could consider amending s. 24.39(1), Wis. Stats., to require the sale of timber to be in line with specified county practices, similar to how the statute currently requires the sale to be in line with federal forest practices.

Larry A. Konopacki
Wisconsin Legislative Council
(608) 267-0683
larry.konopacki@legis.wisconsin.gov

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From: Wenzlaff, Tyler
Sent: Thursday, May 14, 2015 10:15 AM
To: Konopacki, Larry
Subject: Management of BCPL

Larry,

Do you know if management of BCPL lands were turned over to the counties or DNR, would the profit from forest management activities have to go to BCPL or could the counties split it?

Tyler