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Board Meeting Minutes  
May 20, 2025

Present were:

Sarah Godlewski, Board Chair	Secretary of State
John Leiber, Commissioner	State Treasurer
Josh Kaul, Commissioner	Attorney General
Nicole Pegram, Deputy Chief of Staff	Secretary of State
Tom German, Executive Secretary	Board of Commissioners of Public Lands
Rich Sneider, Chief Investment Officer	Board of Commissioners of Public Lands
Chuck Failing, IT Manager	Board of Commissioners of Public Lands
Denise Nechvatal, Controller	Board of Commissioners of Public Lands
Thuy Nguyen, Office Manager	Board of Commissioners of Public Lands

### ITEM 1. CALL TO ORDER

Board Chair Godlewski called the meeting to order at 2:00 p.m.

### ITEM 2. APPROVE MINUTES

**MOTION:** Commissioner Kaul moved to approve the minutes; Commissioner Leiber seconded the motion.

**DISCUSSION:** None

**VOTE:** The motion passed 3-0.

### ITEM 3. APPROVE LOANS

**MOTION:** Board Chair Godlewski moved to approve the loans; Commissioner Kaul seconded the motion.

**DISCUSSION:** Mr. Sneider shared there are three 'bread-and-butter' loans: loans #2, #3 and #5. Last year the Town of La Pointe bought the ferry line that goes between Madeline Island and Bayfield. The town is now taking out loan #1 to do some harbor improvements for the ferry line on Madeline Island. Loan #4 is to the Lac La Belle Lake Management District to finance reconstruction of their boat launch.

**VOTE:** The motion to approve the loans passed 3-0.

The Board of Commissioners of Public Lands (BCPL) unanimously approved **\$4,729,000.00** in State Trust Fund Loans to support **5** community projects in Wisconsin.

1. Town of La Pointe / Ashland County / Finance harbor improvements / \$800,000.00
2. Village of Walworth / Walworth County / Finance purchase of ambulance equipment / \$63,000.00
3. Village of Walworth / Walworth County / Finance roadwork / \$171,000.00
4. Lac La Belle Lake Management District / Waukesha County / Finance reconstruction of boat launch / \$200,000.00
5. Town of Lawrence / Brown County / Finance roadwork / \$3,495,000.00

Commissioner Leiber asked what the town is doing to the harbor. He and his wife may travel to Bayfield.

Mr. Sneider is uncertain about what improvements will be done but there will likely be improvements to the pier/dock where the ferry comes in.

#### **ITEM 4. OLD BUSINESS**

None

#### **ITEM 5. NEW BUSINESS**

None

#### **ITEM 6. CHIEF INVESTMENT OFFICER'S REPORT**

None

#### **ITEM 7. EXECUTIVE SECRETARY'S REPORT**

Executive Secretary German reported that there are several members of Joint Finance that have shown an interest in providing BCPL with the additional resources we requested and returning the agency to program revenue appropriation funding.

Last week the Legislative Council issued a memo on that topic. The memo provided that the legislature had provided BCPL with a program revenue appropriation for 40 years in the past, but doing so was likely prohibited. The memo also noted that there are some remaining statutes that declare that BCPL may deduct expenses of trust management from gross revenues. The memo further noted that there have been no budget appropriations using those statutes for the last couple of years. However, it was left unsaid that those remaining statutes provide BCPL with the ability to invest in a lot of different private investment funds because many of such funds pay investors such as BCPL net earnings not gross earnings. (The fund and management expenses are deducted from the gross earnings before BCPL receives a distribution.) The elimination of those statutes were part of a previous budget bill but the governor vetoed those statutory changes so the statutes have remained in place. Without those statutes it may be questionable for BCPL to invest in such private investment funds. While no one is currently advocating for the elimination of those statutes, the Leg Council memo raised some red flags for Secretary German. It appeared to him that Leg Council did not understand why those statutes remained, the historical aspects of the case law cited in the Leg Council memo and the context of how all these pieces fit together.

Executive Secretary German wrote an 8-page memo which he believes provides a coherent story of how we got to this point with the agency's funding, why a move back to program revenue funding is consistent with the State Constitution and how the Legislature's authority to determine BCPL's investment options fits into the analysis. Secretary German shared his memo with the attorney for Leg Council. She appreciated the additional analysis as she didn't have as much time to delve into the background. She also noted that she was not aware of any concerns raised by any educational beneficiaries over the course of the 40 years that the program revenue appropriation had been in effect. The attorney shared that while unusual, Leg Council will sometimes change their position when new information or legal authority is brought to light. We are currently waiting to hear back from Leg Council.

Board Chair Godlewski asked that Executive Secretary German share with the commissioners the memo he wrote.

Executive Secretary German said he would be happy to do that.

Board Chair Godlewski asked if Leg Council provided a timeline of when they would make their decision.

Executive Secretary German replied, no, they did not. The new memo from Leg Council was written by a senior attorney but seemed to utilize research reflected in an earlier 2019 Leg Council memo which was written by junior attorneys that are no longer with Leg Council. In 2019 that earlier memo asserted that BCPL must go back on general program revenue (GPR). The tone of this recent memo is that BCPL should *probably* be funded with GPR. He believes he was able to provide a clear backstory and raise the argument that the court opinion they cite in their analysis doesn't mean what they think it means.

The case that Leg Council relied upon was very unusual. It started over 100 years ago, when the commissioners had a long list of things they needed guidance on. The Secretary of State and the Attorney General decided to sue each other and bring the case directly to the Supreme Court for guidance. In the end the Supreme Court provided answers on a number of topics but discovered there were factual issues related to accounting for certain transactions that had occurred in prior years. These factual determinations would normally have been handled by a trial judge but there was no trial judge in this case.

The Supreme Court then decided to appoint a special referee to find out the facts and provide an accounting for which lands and monies were supposed to go into which fund accounts. In the referee's special report, he acknowledged that he was unclear how to account for the expenses. Since the state had previously covered all the expenses and no laws had been passed that stated otherwise, he assumed the state would continue to cover all the expenses. If the state did not pay for all the expenses, he believed trust law would be applied and the expenses would be billed pro rata to the separate trust funds.

The special referee's report on such accounting was then presented to the commissioners and the Supreme Court for acceptance. The Commissioners and the Court (in a new case and opinion) accepted the report. But there was no future guidance in the report or the court decision. This "new" court opinion was essentially issued to accept the fact findings of the special referee. It was not issued to provide any opinion for the future.

In 2019 the Leg Council attorneys cited this Supreme Court decision and jumped to the conclusion that BCPL must always be funded with GPR. This is not what the Supreme Court said. By the time the question arose in 2019, the state had funded BCPL expenses with program revenue for 40 years based upon an analysis by an assistant attorney general. The legislature passed the budget bills and accompanying statutes and the governor had signed them. Therefore, some of the main facts that supported the special referee's assumptions 100 years ago were no longer true. Relying on a backwards-looking accounting case from over 100 years ago is not appropriate to determine a course of action for the future today.

On a final note, Executive Secretary German shared that when he got to BCPL many years ago, his opinion was the roughly the same as the attorney for Leg Council. However, over the years, as he's read more carefully and thoroughly, he realized that he had misinterpreted the cases from 100 years ago and his viewpoint has evolved to the point where he has now reached the opposite opinion.

## **ITEM 8. BOARD CHAIR'S REPORT**

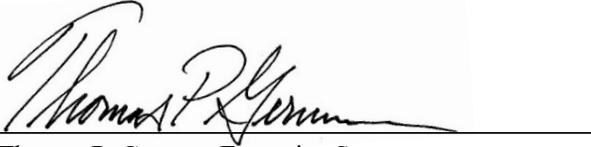
None

## **ITEM 9. FUTURE AGENDA ITEMS**

None

**ITEM 10. ADJOURN**

Board Chair Godlewski moved to adjourn the meeting; Commissioner Kaul seconded the motion. The motion passed 3-0; the meeting adjourned at 2:14 p.m.

A handwritten signature in black ink, appearing to read "Thomas P. German", is written over a horizontal line.

Thomas P. German, Executive Secretary

Link to audio recording:

[https://bcpl.wisconsin.gov/bcpl.wisconsin.gov/Shared Documents/Board Meeting Docs/2025/2025-05-20/BoardMtgRecording.mp3](https://bcpl.wisconsin.gov/bcpl.wisconsin.gov/Shared%20Documents/Board%20Meeting%20Docs/2025/2025-05-20/BoardMtgRecording.mp3)