

Board Meeting Minutes
February 20, 2024

Present were:

Sarah Godlewski, Board Chair	Secretary of State
Josh Kaul, Commissioner	Attorney General
John Leiber, Commissioner	State Treasurer
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
Thuy Nguyen, Office Manager	Board of Commissioners of Public Lands

ITEM 1. CALL TO ORDER

Board Chair Godlewski called the meeting to order at 2:02 p.m.

ITEM 2. APPROVE MINUTES

MOTION: Board Chair Godlewski moved to approve the minutes; Commissioner Leiber seconded the motion.

DISCUSSION: None.

VOTE: The motion passed 3-0.

ITEM 3. APPROVE LOANS

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

DISCUSSION: Mr. Sneider shared that the Menasha Joint School District had a referendum in 2022 for about \$100 million debt issuance to finance school construction. The district then issued bonds for about \$90,000,000. Loan #4 is to finance the remainder of the referendum projects. We have recently received the estimates for library aid distributions for each of the school districts for 2024. Our total Common School Fund earnings are divided up amongst all Wisconsin school districts. The Menasha Joint School District is set to receive \$247,000 this year.

Loan #5 is to the Village of Somerset. The village issued a short term note to acquire land for one of their tax incremental districts. The village decided they wanted a much longer time period to pay off that debt and decided to refinance that initial note with a longer term loan from BCPL. Loans #7, 8 and 9 are for the City of Saint Croix Falls. Loan #7 is a fairly large loan for a sewer project. This is an interim loan and is expected to be refinanced with a Safe Drinking Water Fund Loan issued by the Department of Administration at a subsidized interest rate. Loan #8 is for a bit of downtown redevelopment on a property the city wishes to acquire that is currently in disrepair. This loan is for the acquisition and repair of that property which will eventually be sold. Loan #9 is for capital budget purposes and improvements for the year. This includes paving, the purchase of a squad car and IT upgrades at the St. Croix Falls City Hall.

VOTE: The motion passed 3-0.

The Board of Commissioners of Public Lands (BCPL) unanimously approved **\$13,525,300.00** in State Trust Fund Loans to support **9** community projects in Wisconsin.

1. Village of Fredonia / Ozaukee County / Finance purchase of skid steer and pickup truck / \$106,100.00
2. Town of Stark / Vernon County / Finance roadwork / \$185,000.00
3. Town of Willard / Rusk County / Finance garage construction / \$40,000.00
4. Menasha Joint School District / Calumet, Outagamie and Winnebago Counties / Finance school constructions projects / \$9,700,000.00
5. Village of Somerset / St Croix County / Refinance Promissory Note / \$1,026,000.00
6. Town of Upham / Langlade County / Finance purchase of grader / \$238,200.00
7. City of Saint Croix Falls / Polk County / Interim Financing for South Booster Station project / \$1,850,000.00
8. City of Saint Croix Falls / Polk County / Finance downtown redevelopment / \$300,000.00
9. City of Saint Croix Falls / Polk County / Finance capital budget purchases / \$80,000.00

ITEM 4. OLD BUSINESS – BCPL Trust Fund Accounting and Other Potential Legislative Changes

Executive Secretary German explained that under the current accounting and spending authority for the Normal School Fund, the UW could reach into the Normal School Fund itself and spend from it in accordance with its budget authority. However, the Normal School Fund is classified as a “non-spendable” fund. Secretary German spoke directly to the state controller and to her top assistant on this matter. The controller was appreciative of BCPL reaching out and indicated they may be able to resolve the issue without legislation by creating a mechanism where BCPL would deliver earnings to the UW instead of the UW reaching in and taking money themselves. To cover all the bases, Secretary German also raised the issue with the agency’s budget analyst to make sure that their office was on the same page, and they responded the same way. At this point, it is likely this issue will be resolved without additional legislation. He will be checking back with both offices in the next couple of weeks to ensure that progress is being made. Both said that if legislation was needed it would probably be best to include that as a technical piece on the upcoming budget. However, both were hopeful that this could be resolved without legislation.

Board Chair Godlewski asked if this could potentially be a technical update in the upcoming budget for all four accounts.

Executive Secretary German replied that the most pressing issue was the Normal School Fund. We have four principal funds and a custodial fund that also holds income or earnings after a transaction has cleared. It is okay to operate that way. It is a bit strange that the name of the custodial account fund is the “Common School Income Fund” when the Fund actually holds more than that. The nomenclature is wrong, but the functionality of is workable, it's just not optimal.

Board Chair Godlewski asked if this proposed Normal School Fund change is in the realm of best accounting practices and could this be applied as a technical fix for the remaining earnings accounts.

Executive Secretary German explained that setting up separate income accounts for the remaining funds could be a technical fix as well. However, it also creates a lot more work on our end. In talking with Denise, BCPL’s Controller, her first point was it would be okay if you want to do that, but it does create a lot more transactional work on our end. While such a change might be considered a “best practice” for funds with constraints such as ours, in the “best practices” world BCPL would be staffed with twice as many people as it currently has.

Board Chair Godlewski agreed. It sounds like with the Normal School Fund specifically, we might be able to resolve more from a technical perspective. As for the other recommendations, the other earnings accounts, potential additional revenue options, switching from GPR to program revenue, and the request to keep the \$50,000 that we receive from managing our submerged land leases without being basically funded to do that as compensation, it may require legislation. Executive Secretary German agreed.

Board Chair Godlewski stated regarding the remaining three changes, her thoughts are putting them as budget proposals for the upcoming budget.

Executive Secretary German believes it has to be contingent on adding another accountant. It really is a situation where if you're continuing to pour more burdens onto that current single agency accounting position without providing the resources to handle that, you're heading toward a bigger problem down the line. So, yes, it could be handled in the budget although he is not sure how to do it as a contingent budget proposal. That is something he can also work with the state controller and the budget analyst on. Board Chair Godlewski shared that she believes it would be helpful.

Executive Secretary German commented that in a simple world, if adding those separate earnings accounts can be done without legislation, if additional resource is included in the upcoming budget, then we could move immediately to doing those non-legislative changes. If we already identified the path and the rationale and the support for doing it, it seems to make a lot of sense.

Commissioner Leiber expressed that it is always easier if you don't have to go through the legislature to get things done. That should always be your first choice. There is nothing to lose by asking for some of those changes to take place first.

Board Chair Godlewski asked about the trust funds. In the overview write up, on page one, the seed structure of the fund and the revenue model for it, was it seeded through federal land grants and then in addition to fines and forfeitures? Is it a percentage of fine and forfeitures? What does the legislation state and is that only seed funding or is it supposed to be a continual kind of revenue stream in the same way that timber and now our investments have been providing funds for distribution into the fund?

Executive Secretary German explained that it was only the Common School Fund that had all these other revenue sources identified in Article 10, Section 2 of the Constitution. Not only was it the land proceeds, but there were other sources of revenue included as well. The funding stream that has had the biggest continuing effect is the clause that provides all monies, escheats and the clear proceeds of fines and forfeitures that accrue to the state are to be deposited in the Common School Fund. There was no qualifying language on "all monies" or qualifying languages on "fines and forfeitures", so there was no percentage identified there.

In the early days of statehood, there weren't any subtractions from the fines and forfeitures. If there was a \$10 forfeiture, the entire \$10 went into the Common School Fund. As time went by, legislation started acknowledging that a limited amount of expenses of prosecution and collection should be offset against the total amount of the fine or forfeiture. By 1971, the amount of that the counties were able to keep in terms of prosecuting crimes and speeding tickets had risen to 50%. There was a State Supreme Court opinion at that time that declared that 50% was an allowable amount of costs that could be offset against the total fine or forfeiture. The Constitution talks about the clear proceeds of fines and forfeitures, and obviously it costs money to prosecute these cases, and 50% seems reasonable. However, the court also noted that it was acceptable to have such expense offsets against the total amount of the fine or forfeiture as long as the amount that goes to the School Fund is not "nominal."

Over the years speeding tickets went from \$30 to over \$160.00, however the fine is still only \$30. That \$160 speeding ticket now has \$130.00 of fees, surcharges and assessments associated with it. 50% of the fine or forfeiture is still going to the Common School Fund, but 50% of the fine is only \$15. \$15 is less than 10% of that total speeding ticket now. Is that nominal? The clear proceeds of the fine hasn't changed in roughly 50 years, but the clear proceeds of the entire ticket has changed drastically. In the late 80s, early 90s, there was allegedly a council study committee that looked into this issue. These fees, assessments and surcharges had already started but hadn't reached their current levels. They were already starting to build and there was quite a bit of disagreement within the study committee as to whether it was proper or constitutional.

Board Chair Godlewski asked Commissioner Kaul (Attorney General) about his thoughts on ways of looking at this or evaluating it.

Commissioner Kaul noted from a practical perspective initially, there isn't likely to be much interest from the legislature in changing the way that some of those things are structured because there are various programs that are funded with those funds. If the court has already addressed this issue, it's unlikely that's a route the court would go down again.

Board Chair Godlewski asked if the path to take on this is legislative or more legal interpretation.

Commissioner Leiber replied that it could be both. He does not believe the legislature would want to do this because it could end a lot of the funding structures for other things and there could be push back from all sorts of different organizations. If you go down the legal route, then you don't really have to convince all these other groups, you just have to convince the court. Both paths are possible, but one is having to deal with us people.

Executive Secretary German shared that for practical purposes, you need both approaches. What would happen if a lawsuit came through and successfully challenged the status quo? For the most part, it is doubtful that the Supreme Court would make up its own allocation. It could invalidate current statutes. It could invalidate current procedures, but ultimately would not likely then take it upon itself to do a reallocation. Ultimately, if there was successful litigation, you would need legislation as Commissioner Leiber pointed out, to make sure that entities that had been relying on some of these funding sources were then funded with other funding sources.

Board Chair Godlewski commented that we are kind of going about a reevaluation. What do we need to be thinking about to best position the agency. Knowing that this is something that was last evaluated in 1971, does it make sense for us to also dive a little bit further into the particular kind of monies with these additional services fees? Is that something that we should consider?

Commissioner Kaul clarified how he is weighing in on this issue, although he is an attorney, he is not the attorney for BCPL. If there is need for legal analysis, he is happy for that to be separate. As a practical matter and as a commissioner, there is not going to be any appetite in the courts for reconsidering this from scratch. That's his belief and not a legal analysis. He admits he has not looked at the legal question as to whether we're only receiving a negligible/nominal amount or not. It's hard to see how 50 some years since, how that's going to get changed. Plus, there is this concept that if you don't assert your rights, you lose them. For us to step in 50 years later seems like something that the courts would view with a lot of skepticism.

Executive Secretary German pointed out that the constitution refers to all monies and the clear proceeds of fines and forfeitures that accrue to the state. If you get a speeding ticket in Madison and it goes to a Municipal Court, BCPL gets none of that money because the fine itself accrues to the municipality. The only portion of these fines and forfeitures that are actually going into the Common School Fund are cases that are coming through the county circuit courts and that's why you have this split of 50/50 with the county because the underlying fine or forfeiture is actually accruing to the state. He agreed with the Commissioner Kaul. There are a lot of other issues associated with it and if it needs further review, he is happy to play whatever role the board would ask him to take on. Secretary German noted that the best place to look at some of that data would be at DOT. On their website, there is a pie chart that shows who gets what from a speeding ticket. On that colorful pie chart, it jumps out at you that the Common School Fund gets less than a 10% slice.

Commissioner Kaul asked if those fees are based on statute. Executive Secretary German replied, yes.

Commissioner Leiber asked if a fraction of those fees goes to other things as well. The absolute dollar amount of the things goes up, whereas the forfeiture piece has remained the same, is that right?

Executive Secretary German replied that is correct. The fine for speeding is \$30.00. That has not changed since 1971. The underlying fine has remained the same, it's all these additional things that were added to it. None of the statutes talk about fractional shares or anything like that, it merely talks about gross dollar amounts of these fees and surcharges that are added to the underlying fine.

Commissioner Kaul suggested that if the legislature is making changes in those ticket costs, he is not advocating for increasing speeding ticket fees, but if results in that anyway, it makes sense to think about what share of that should go to the BCPL. Has there been discussion about this in the past?

Executive Secretary German shared that there have been a number of developments during his time with BCPL on this issue. One of them was that there has been a growth of municipal courts across the state. For example, Rosendale had developed quite a reputation for funding virtually all of their operations from speeding ticket revenues. Based on that, there were quite a few other smaller municipalities that added municipal courts. As municipal courts were added, fewer tickets went through the local circuit court. As fewer tickets went through county circuit court, the amount of fines and forfeitures coming into the Common School Fund dropped. Our fine and forfeiture revenue is roughly half of what it was when he first started at BCPL. He does not know of any studies that confirm the relationship between the additional municipal courts and the change in fines and forfeitures accruing to the state. The other thing was there was a time when the counties pushed for more of that underlying ticket to go to the county because in some counties where there were now more municipal courts, it wasn't just the Common School Fund that was losing a piece of the revenue. The circuit court and therefore the county was losing revenue as well. The counties had pushed for a much greater share of that original ticket. At least 10 years ago, after significant discussions that approach ground to a halt and it never got to a full vote in either House of the legislature.

Commissioner Kaul asked if Executive Secretary German had any subsequent conversations with the counties on that issue.

Executive Secretary German responded that he talked to Mark O'Connell himself, but it was quite a few years ago.

Commissioner Leiber shared that one of the issues with ticket amounts, fines and assessments is they're not trying to raise the cost of the ticket. They're just trying to find an alternative revenue source while being able to say we didn't raise taxes. We're just making the people who use the services pay more. So, that's why the BCPL portion hasn't gone up because they're not really trying to raise money for BCPL or for the counties. They're just trying to fund the courts without taking it from GPR. This is their way to do it. They found a way to tack it onto something and nobody really objected too much because nobody's going to object to somebody who's speeding and driving recklessly paying more money. He does not believe they would consider combining everything into part of the fine and divvying it up because that would take away the whole purpose of why they did it and structured it this way.

Board Chair Godlewski summarized the discussion. There is one option, which is legislative, to address what ticket costs are in the statutes, asking them to increase that percentage. BCPL's share has not been based on the gross ticket price itself. So, looking at what's considered negligible or not, it wouldn't matter because of this work around that has been deployed for a long time.

Commissioner Leiber shared that if everyone's asking for a little bigger slice of it, then we can ask for an extra \$5 or something per ticket because otherwise if they just increase the fees everywhere else, they might as well increase the base fee too. It's not too much more of an ask and it wouldn't upset anybody else either. We don't want the counties and the court system also on the other side of us. So, if everyone's asking for a small increase to keep up with inflation or whatever, that might work better than just trying to say take all the money for us.

Board Chair Godlewski asked for clarification of whether change is wanted for fines issued by the county and state. These are the two government entities that are a part of this equation. It's not the municipalities, it's the counties and the state. There are 72 counties and multiple agencies at the state in addition to the BCPL receiving funds.

Executive Secretary German explained yes, but often times the law enforcement individual writing the ticket has a bit of discretion as to how or where they're going to send this ticket. Are they going to send it to a municipal court or are they going to send it to a circuit court? There have been times where the tradition in a particular area may have been to send the offender to circuit court and they decided from now on, we're going to send it to the municipal court. The most important thing is we have a trend line that over time the portion of fines and forfeitures going to the Common School Fund has been going down and that accelerated over the course of the last 15 years. It is worth taking a closer

look at. There are a multitude of factors at play and a multitude of players involved.

Commissioner Leiber added depending on where the ticket gets sent, sometimes if it's a small municipality who has a part time police officer, part of their idea is that it's a revenue generating position. They will likely write tickets to their municipality. If you get pulled over on the Interstate by the State Patrol that goes to the county. Often the sheriff's tickets will go to the county, but some of the local ones are more police tickets because that will generate revenue for the municipality. It kind of feeds into itself. There are deputies moonlighting as local police, part time police officers and it gets confusing. It's really up in the air depending on who you get and who you get pulled over by.

Commissioner Kaul commented regarding the municipal court issue. He is surprised that the counties wouldn't be more engaged on that issue because it's directly impacting their revenue stream. To the extent that we're thinking about trying to change the long term trend here, they would be a logical partner to work with.

Board Chair Godlewski concurred with Commissioner Kaul. This has been a very helpful conversation. She asked if Executive Secretary German would be willing to speak with the counties with regards to reevaluating the legislature's ticket prices. It seems from this conversation that's really the only option to get into this to address the issue.

Executive Secretary German shared that he will likely be seeing Mark O'Connell in approximately three hours as the county's association is having their event tonight. He will ask Mark if he's got some time in the foreseeable future to talk.

Commissioner Kaul stated that we should please feel free to reach out to folks at DOJ. We can brainstorm and see if there are issues we should be thinking about here but given how entrenched this system is, we should have clear eyes about where we are on this.

Board Chair Godlewski asked that Secretary German keep us apprised on conversations with the accountant or the county's association. She noted it was a great memo and a helpful conversation.

Commissioner Leiber commented that there's one thing we didn't talk about which is the "all other revenue part" and that's the submerged land leases. If that's only \$50,000 that's not really a big ask to redirect those funds to BCPL. Can that be part of the request as well? It's not a huge change and that could possibly fund all sorts of things at BCPL. If we go back five years ago to when BCPL was funded with program revenue, even though submerged land lease revenue went to the general fund, in essence they acted as an offset. Let's say that our operating expenses for the year were \$1.5 million, but we had produced \$50,000 in submerged land leasing revenue. The way the accounting system worked is the \$50,000 would offset against the \$1.5 million. So, the actual amount of trust fund revenue that was spent on agency expenses was actually only \$1.45 million. We went from a situation where we weren't given the money, but we were given credit for generating the money. We now have a situation where we are producing this stream of revenue and even though it's not huge, there's no credit being given to the agency for that. He feels this might be a good first step to try to redirect some of these streams. At least get them used to the idea that these little bits can be much more useful within BCPL than just dropped in the general fund where nobody notices.

Executive Secretary German shared that when he first came to BCPL the total annual amount of submerged land leasing revenue that came through our agency was a couple thousand dollars. It's been a substantial increase over the years.

Board Chair Godlewski clarified Commissioner Leiber's request. The next step in regard to program revenue and submerged land lease funds to consider is to incorporate that request into an upcoming budget proposal.

Commissioner Leiber replied, yes. He shared that he has been asking some legislators why GPR. Why not program revenue? That is certainly something we should bring up. He does not believe they will put up much of a fight. It's not worth the trouble of an hour long hearing. It's getting the little wins and then seeing what we can get from there.

ITEM 5. NEW BUSINESS

None

ITEM 6. CHIEF INVESTMENT OFFICER'S REPORT – Quarterly Investment Report

Mr. Sneider reported that our portfolio is performing as expected. Our continuing diversification is designed to stabilize returns and distributions over a variety of market conditions, and it is doing just that. The bottom line is that the value of the Common School Fund increased by about \$70 million or 5.3% last year. The projected annual income increased another \$6,000,000 over the past 12 months to nearly \$70 million. The investment committee was kept busy in 2023 by further diversifying our portfolios in the Common School Fund.

We made six new private fund commitments totaling \$135 million during the year. These new commitments included two direct lending funds that originate from senior secured floating rate loans. We also made two commitments to infrastructure funds. Our first infrastructure fund now has six investments, including a global owner and operator of wireless towers across 20 countries in Europe, Latin America, and North America. A joint venture with AT&T to establish an open access fiber network across key markets in the United States. A vertically integrated provider of waste management and recycling services to over 30,000 municipal commercial and industrial customers in Canada. A leading utility scale battery platform including energy storage assets located in critical grid locations in the United States. A leading industrial gas supplier in South Korea serving the semiconductor, steel and chemical sectors under long term contracts and a joint venture with Occidental Petroleum to develop a facility to capture and permanently store over 500,000 metric tons of CO₂ per year. Staff expects another 20 to 25 investments over the next several years to be made in accordance with our existing commitments to this infrastructure asset class. Again, stable income and growth are the goals of these investments which all provide returns with little or no correlation to our other asset classes.

Finally, we also made commitments to two venture capital funds with general partners we've worked with before. These early stage investments in the healthcare and business to business tech industries continue to diversify the Common School Fund portfolio.

In addition to these new private fund commitments, the State Trust Fund Loan Program was also very active over the last year. Loan disbursements of \$129 million in 2023 were nearly 70% higher than in 2022 and almost double the total disbursements made in 2021. We're also getting much closer to shifting our public equity strategy from a basket of ETFs to a single fund managed through direct or custom indexing. This shift will simplify the ongoing management of public equities through a low cost and flexible strategy. We've been developing this program for over a year and look forward to making that transition.

There are three takeaways from my shortened report today. First, we shall continue to diversify our investments. Second, our portfolios are performing well, including a 60% increase in the earnings distributions made to public school libraries over the last two years alone. And three, we are well positioned to provide stable and increasing distributions into the foreseeable future. Diversification is our most important tool, limiting shocks to our beneficiaries.

Board Chair Godewlski commented that when you think about \$135,000,006 of investments and what those investments are doing, it's exciting to hear more. She would like during an upcoming report to highlight a few of the venture funds that are Wisconsin based and the interesting projects that they are supporting. This is the result of the Common School Fund and our independent investment authority.

Commissioner Leiber added that he would love to hear more about what we're doing and investing in for Wisconsin. He shared that because he's the State Treasurer, people think he knows about these things.

ITEM 7. EXECUTIVE SECRETARY'S REPORT

Executive Secretary German reported that next week he will be speaking to the Wisconsin County Foresters Association in Madison. After that, he will be attending the municipal finance meetings in The Dells later that week, hosted by Ehlers. It's amazing, but they tend to do a much better job of describing and promoting our trust fund loan program when he's in attendance there, it seems. And finally, our unusual winter is having some unusual ramifications. At a certain point in time, he was not supposed to even speak the words climate change, but we are encountering some significant changes. Due to the warmer weather, towns up north imposed their seasonal weight limits yesterday, which effectively suspended the logging season in early February. For the last two years, we had approximately \$1,000,000 each year in timber revenue. This year we're going to be lucky to bring in half that amount, so we'll keep our fingers crossed that maybe Mother Nature may reverse course. It's looking like a grim season for logging. This report on the shortened logging season is merely to keep you apprised as to what we're encountering in the field, and that's a significant change.

ITEM 8. BOARD CHAIR'S REPORT

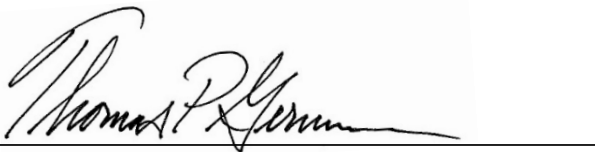
None

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 3:02 pm.

A handwritten signature in black ink, appearing to read "Thomas P. German", 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/2024/2024-02-06/BoardMtgRecording.mp3](https://bcpl.wisconsin.gov/bcpl.wisconsin.gov/Shared%20Documents/Board%20Meeting%20Docs/2024/2024-02-06/BoardMtgRecording.mp3)