CAPITAL PROJECT FUND
POTENTIAL SHORTFALL/IMPACTS
PART II

A Report Prepared for the

Legislative Finance Committee

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RECAP

At the December 2003 meeting, our office presented a report on capitol land grant revenue and associated fiscal material such as diversions, uses of the revenue, appropriations, and a potential negative ending fund balance at the end of fiscal 2005. Legal questions were also raised and given to the Legislative Services Division for legal analysis. A number of legislative considerations were presented to the committee, some of which depended on the findings of the legal analysis. This report presents the results of the legal analysis and offers options for actions the committee may wish to take.

In the previous report, we reported that because appropriations of capitol land grant revenue exceeded anticipated revenue in the 2005 biennium, the executive was considering not repairing the capitol steps for a savings of $400,000. We also noted that the Governor had subsequently announced that $450,000 of the $50.0 million in federal funds from the Jobs and Growth Tax Relief Reconciliation Act would be used to repair the capitol steps. At the time this was written, the executive had used $52,276 of the $400,000 appropriation for the capitol steps and had not spent any of the federal funds.

LEGAL ANALYSIS

Five questions were asked concerning the legality of certain aspects of the capitol land grant revenue and associated issues. Only the fourth question requires the committee attention. The following is a summation of the questions and Legislative Services Division staff's answers.

1) Are uses of capitol land grant revenue for administrative expenses, maintenance of capitol complex buildings, and improvements to capitol complex land constitutional and in accordance with the Enabling Act?
   Yes. It is permissible for the State of Montana, as trustee for the capitol building land grant trust lands, to use the money for these purposes.

2) Does the condition placed on the appropriation of capitol land grant revenue in subsection 2, section 7 of House Bill 5 (2003 session) apply to both subsections 1 and 2?
   Yes. The condition to allow the phase in of the project as capitol land grant revenue becomes available applies to both the $600,000 appropriation for capitol complex land in subsection 2 and the $400,000 appropriation to repair the front steps of the capitol in subsection 1. It is unclear what the practical difference really is since 17-7-212, MCA, allows any unspent capital appropriation to continue until the project is complete which has the same effect as the "phasing in" statement in HB 5.

3) At the end of fiscal 2003, the capitol building fund had a negative fund balance. Is this legal?
   Yes. It is not illegal to have a negative fund balance at the end of a fiscal year. It is illegal to have a negative cash balance. At the end of fiscal 2003, the capitol building fund had a cash balance of $527,690. As long as the cash in the fund was positive, the statute was not violated. The fund balance was negative because of a $602,126 liability.

4) Statute allows the Department of Natural Resources and Conservation (DNRC) to divert up to 10 percent of the money deposited into the capitol building land grant trust in the previous fiscal year for administrative purposes. In fiscal 2003, DNRC diverted 27.75 percent of the revenue deposited to the trust in fiscal 2002, with $220,255 of the amount characterized as prior year

revenue. What is the meaning of the word “money” and does it include money from prior year activity?
Money, as used in 77-1-109(3), means only money received from current year activity and not prior year activity. Under clear language of the statute, in any fiscal year, the department is prohibited from diverting more than 10 percent of the previous fiscal year’s revenue. Period. The department’s practice is in violation of the statute.

5) Is current accounting practice in conflict with the 18-2-107, MCA, requiring capitol land grant revenue to be deposited in a capital projects fund? Is the statutory diversion for resource development in conflict with the requirements of 18-2-107, MCA?
No.

SUGGESTIONS

The following options for committee action are presented to the committee for the purpose of achieving fairness in the funding of the DNRC’s timber sale program and to improve the appropriation process of capitol land grant revenue in House Bill 5.

1) The previous report discussed the funding of DNRC’s timber sale program through diversions of timber sale revenue from various land trusts administered by the department in the amount appropriated by the legislature. In practice, only two (the common school trust and the capitol land grant trust) of the nine trusts that produce timber sale revenue contribute revenue to fund the program. Although these two trusts produce the largest amount of timber sale revenues, the other land trusts produce timber sale revenue, but do not contribute funding for the program. **The committee may want to urge DNRC to include all land trusts that produce timber sale revenue in the calculations for determining funding for the timber sale program.**

2) Statute allows DNRC to divert up to 10 percent of the money deposited into the capitol building land grant trust in the previous fiscal year for administrative purposes. The legal analysis by the Legislative Service’s Division found that the department violated the statute by exceeding the limit in fiscal 2003. The table shows a history of this diversion including the amounts allowed and the amounts actually diverted since the authorization became effective in fiscal 2000. In fiscal years 2000, 2001, and 2002 diversions were less than the 10 percent limit. In fiscal 2003, the diversion exceeded the limit by $195,346. **The committee may want to urge DNRC to transfer $195,345 from the trust land administration account to the capitol building land grant trust.**

Capitol Land Grant Trust Revenue
Diversion to Trust Land Administration Account

Fiscal Year	Actual Revenue	10% Diversion Limit	Actual Diversion	Over Limit	Under Limit
1999	$500,460				
2000	1,968,479	$50,046	$46,915		$3,131
2001	2,590,441	196,848	48,140		148,708
2002	1,100,715	259,044	151,480		107,564
2003	1,019,720	110,071	305,417	$195,346	
2004	NA	101,972	NA		

3) Currently, projects are approved and appropriated from capitol land grant trust revenue in House Bills 2 and 5. The appropriations are not prioritized. Because capitol project funds are appropriated across departments and without clear prioritization, the executive determines which projects are to be funded if revenues are less than anticipated. Consequently, the Legislature’s

role in determining the use of these funds is substantively reduced. **The committee may want to direct the LFD staff to draft a letter for the chairman's signature requesting members of the 59th Legislature Long Range Planning Appropriations Subcommittee to prioritize projects funded from capitol land grant trust revenues.**

4) Statute (17-7-212, MCA) allows the balance of an appropriation for capital projects to continue until the project is completed. The previous report identified projects that have not yet been completed, including one from 1991. Uncompleted projects may linger for many years. If projects are not completed in a timely manner, the remaining appropriation balance ties up the money making it unavailable for the legislature to appropriate for other projects. Over time, legislative priorities for the money change and a more current need may be a higher priority than an uncompleted project appropriated in the past. **The committee mat want to direct the LFD staff to draft a letter for the chairman's signature requesting that members of the 59th Legislature Long Range Planning Appropriations Subcommittee review and prioritized all uncompleted projects while analyzing current potential uses of the money. Additionally, the committee may wish to request the 59th Legislature Long Range Planning Appropriations Subcommittee to consider inserting completion target dates on projects and remove or reduce appropriations for projects deemed a lesser priority.**

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