

STATE OF WISCONSIN
Senate Journal
Ninety–Eighth Regular Session

FRIDAY, December 5, 2008

The Chief Clerk makes the following entries under the above date.

PETITIONS AND COMMUNICATIONS

**State of Wisconsin
Legislative Reference Bureau**

December 5, 2008

To the Honorable, the Legislature:

The following rules have been published in the November 30, 2008 Wisconsin Administrative [Register No. 635](#):

Clearinghouse Rules	Effective Date(s)
07-029	12-1-2008
07-036	12-1-2008
07-094	12-1-2008
07-107	(part) 12-1-2008 (part) 7-1-2009
07-110	12-1-2008
07-116	12-1-2008
08-010	(part) 12-1-2008 (part) 4-1-2009
08-018	12-1-2008
08-021	12-1-2008
08-024	12-1-2008
08-028	12-1-2008
08-039	12-1-2008
08-042	12-1-2008
08-049	12-1-2008
08-051	12-1-2008
08-058	12-1-2008
08-059	12-1-2008
08-072	12-1-2008

Sincerely,
BRUCE J. HOESLY
Senior Legislative Attorney/Code Editor

**State of Wisconsin
Regional Transit Authority**

November 15, 2008

The Honorable, The Legislature:

Over the last 26 months, the Southeastern Wisconsin Regional Transit Authority has diligently researched and analyzed transit needs and challenges in this region and discussed potential solutions to meet the transit needs of our residents, encourage economic development and make southeastern Wisconsin an attractive place to work, live and recreate.

On behalf of my fellow RTA commissioners, I'm pleased to tell you that we've made significant progress in working together as a region and have found that we are all ultimately striving for the same goal: a more vibrant, prosperous southeastern Wisconsin region. We believe the RTA's consensus on this report is an important indication that regionalism is taking hold, and that we are making decisions with the best interest of the region and state in mind.

We present to you today recommendations for dedicated funding, governance and operations of transit that we feel will lead to a more efficient, effective regional transit system that will progress beyond municipal boundaries and focus on connecting people to jobs and education within the region.

Based upon our community, business and labor outreach, public polling, and individual meetings with transit experts throughout the region, we firmly believe that transit is a top priority for southeastern Wisconsin. These constituencies support a dedicated funding source for transit for different reasons – access to jobs, economic development potential, its ability to attract and retain workers, improved access to education institutions and cultural amenities and we've listened to their feedback. We agree that transit is critically important to the economic health and vitality of this region, and that a dedicated sales tax is the only viable funding mechanism to preserve our current transit systems and implement new intercounty options. We respectfully ask for your support of our recommendations for all the same reasons.

Thank you for the opportunity to study transit and present you with our recommendations for ensuring the health and vibrancy of a regional transit system. We look forward to working with local governments and the current Legislative Council Committee to ensure that solving our transit challenges is a top priority in the region and we encourage you to join us in accomplishing this goal.

Sincerely,
KARL J. OSTBY
Chairman

**State of Wisconsin
Department of Natural Resources**

November 17, 2008

The Honorable, The Legislature:

Pursuant to 20.0916(6), Wis. Stats., the Department of Natural Resources submits this *Report to the Wisconsin Legislature: Properties Purchased with Funds from the Knowles–Nelson Stewardship Program on which one or More Nature–Based Outdoor Activities Is Prohibited*.

This report covers the period October 27, 2007 (effective date of 2007–2009 Biennial Budget), through June 30, 2008. This is the first time submission of this report is required by Statutes.

Additional copies of this report may be obtained from the DNR by calling 608–266–5782 or may be obtained from the DNR website at: <http://dnr.wi.gov/stewardship/>.

Sincerely,
MATHEW J. FRANK
Secretary

Referred to joint committee on **Finance**.

Referred to committee on **Environment and Natural Resources**.

**State of Wisconsin
Legislative Audit Bureau**

November 20, 2008

The Honorable, The Legislature:

As required by s. 13.94(1)(em), Wis. Stats., we have completed a program evaluation of the Wisconsin Lottery, which is administered by the Department of Revenue. Although annual sales have fluctuated, they increased from a total of \$482.9 million in fiscal year (FY) 2003–04 to \$494.7 million in FY 2007–08, or by 2.4 percent over the past five years. Net lottery proceeds provided \$146.5 million in property tax relief in FY 2007–08.

In FY 2005–06, the Wisconsin Lottery implemented an evaluation tool to assist in the development and management of instant games. We include a recommendation for the Wisconsin Lottery to include product information costs, which include spending to publicize individual games, in the evaluation tool and to require its contractor to regularly report on product information expenditures associated with specific games.

Between FY 2003–04 and FY 2007–08, the Wisconsin Lottery paid one contractor \$25.2 million for product information services and another contractor \$61.1 million for operations services such as computerized gaming system services. Formal annual performance evaluations are required under both contracts. While the Wisconsin Lottery meets regularly with its product information contractor to provide verbal feedback, it has not completed formal annual evaluations, as it does with its operations contractor. We include a recommendation for the Wisconsin Lottery to evaluate its product information contractor annually.

We appreciate the courtesy and cooperation extended to us by Wisconsin Lottery staff in the Department of Revenue. The Department's response follows the appendices.

Sincerely,
JANICE MUELLER
State Auditor

**State of Wisconsin
Legislative Audit Bureau**

November 25, 2008

The Honorable, The Legislature:

At the request of the departments of Commerce and Administration, and in accordance with s. 13.94(1s), Wis. Stats., we have completed a financial audit of the State of

Wisconsin Petroleum Inspection Fee Revenue Obligations Program for the fiscal years ending June 30, 2008, and June 30, 2007. We express our unqualified audit opinion on the Statement of Changes in Program Assets and related notes.

Under the program, the State has issued revenue obligations, such as bonds and commercial paper, to provide financing for payment of claims under the Petroleum Environmental Cleanup Fund Award (PECFA) program. These revenue obligations are not general obligation debt of the State. Instead, they are to be repaid primarily from the \$0.02 per gallon fee charged to suppliers of petroleum products sold in Wisconsin, which is collected by the Department of Revenue.

During fiscal year (FY) 2007–08, the State collected \$76.6 million in petroleum inspection fees and made \$30.4 million in scheduled debt service payments, including \$20.3 million in principal repayment and \$10.1 million in interest. As of June 30, 2008, a total of \$252.3 million in revenue obligations remained outstanding, to be repaid from future petroleum inspection fees.

Petroleum inspection fees in excess of debt service requirements are deposited to the Petroleum Inspection Fund and are used to pay PECFA claims and for other purposes authorized by the Legislature, including the early redemption of petroleum inspection fee revenue obligations. During FY 2007–08, \$47.0 million in inspection fees was deposited to the Petroleum Inspection Fund while \$16.8 million in PECFA claims was paid from the Fund. The remaining \$30.2 million was used for a variety of purposes, including a \$20.3 million transfer authorized by the Legislature to the Transportation Fund, as well as \$1.0 million in transfers to the General Fund to help meet lapse requirements included in [2007 Wis. Acts 20 and 226](#).

We appreciate the courtesy and cooperation extended to us during our audit by staff of the departments of Commerce, Administration, and Revenue.

Sincerely,
JANICE MUELLER
State Auditor

**State of Wisconsin
Claims Board**

November 25, 2008

The Honorable, The Senate:

Enclosed is the report of the State Claims Board covering the claims heard on November 6, 2008.

Those claims approved for payment pursuant to the provisions of 16.007 and 775.05 Stats., have been paid directly by the Board.

This report is for the information of the Legislature. The Board would appreciate your acceptance and publication of it in the Journal to inform the members of the Legislature.

Sincerely,
CARI ANNE RENLUND
Secretary

STATE OF WISCONSIN CLAIMS BOARD

The State of Wisconsin Claims Board conducted hearings at the State Capitol Building in Madison, Wisconsin, on November 6, 2008, upon the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. John A. Rupp	Innocent Convict, § 775.05, Wis. Stats.	\$22,797.45
2. John & Bonnie Weiglein	Transportation	\$3,671.25
3. Jeff's Northshore Auto	Transportation	\$4,994.14
4. City of Eau Claire	University of Wisconsin	\$1,481.04

The following claims were considered and decided without hearings:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
5. Theodore H. Paulson	Agriculture, Trade & Consumer Protection	\$4,547.38
6. Michele A. Windsor	Natural Resources	\$316.45
7. Gabriel Umentum	Corrections	\$4,618.17
8. Eugene Cherry	Corrections	\$717.59
9. Joseph C. Clark	Corrections	\$82.73
10. Lashone Jackson	Corrections	\$160.00
11. Mark T. Smith	Corrections	\$18.88

The Board Finds:

1. John A. Rupp of Cazenovia, Wisconsin claims \$10,000 as compensation for wrongful imprisonment and \$12,797.45 attorneys' fees related to his wrongful conviction. On March 14, 2001, the claimant was found guilty of theft pursuant to § 943.20(1)(b), Stats., and was sentenced to six years in prison. The claimant was also convicted of theft pursuant to § 943.20(1)(d), Stats., however, there was no prison sentence for this count and it is therefore not at issue here. The claimant was already serving time for other convictions and therefore served his sentence for this case from August 11, 2003 until March 4, 2005, nearly 19 months. The claimant has always asserted his innocence and did not in any way contribute to his conviction. The claimant believes that both his trial and appellate counsel were ineffective and he proceeded with his appeals *pro se* to the best of his ability. The claimant states that there are no civil remedies available to him to recover his damages. On February 15, 2005, the Wisconsin Court of Appeals ruled that the evidence was insufficient to convict the claimant of embezzlement under § 943.20(1)(b), Stats. The Court found that "a reasonable jury could only regard the money as belonging to Rupp at the time he used it" and that the claimant could not be guilty of embezzling his own money. The court dismissed the claimant's conviction of § 943.20(1)(b), Stats., and ordered his immediate release. Despite the February 15 reversal, the claimant was held in custody for an additional six weeks. The claimant was finally released on March 24, 2005.

The claimant states that as a direct result of his wrongful imprisonment, he has suffered significant financial losses. He states that prior to his incarceration he earned \$15 per hour at full time employment and therefore lost nearly \$50,000 of income during his incarceration. The claimant also lost social security contributions and the ability to grow his business. The claimant states that he also suffered emotional damage during his incarceration. He was unable to support his family, placed next to murderers, and mistreated by guards. The claimant states that he suffered not only the regular social stigma of having been incarcerated, but additional stigma because the conviction was related to his work.

The claimant requests reimbursement at the statutory rate of \$5,000 per year for two years. The claimant also requests compensation for his post-conviction attorneys' fees, specifically: \$7,300 for his appellate counsel, \$800 in costs for his work *pro se* (his appellate counsel ceased to represent him when he ran out of money), and \$4,697.45 attorneys' fees for the preparation of this claim. The claimant points to the Claims Board's decision in the Claim of Steven Avery, in which the Board construed the language of § 775.05, Stats., as allowing for the payment of attorneys' fees in addition to the statutory rate of compensation per year.

The Juneau County District Attorney, Scott Southworth, states that he was not the prosecutor at the time and has limited knowledge of the claimant's case; however he makes several observations about the claim. Mr. Southworth states that the amount of attorneys' fees requested by the claimant appears reasonable; however, he does not believe that the claimant is entitled to the statutory maximum reimbursement of \$5,000 per year for his incarceration because the claimant did not serve a full two years in prison. In addition, he points to the fact that the claimant's conviction for another count in the same criminal complaint was upheld on appeal [theft under § 943.20(1)(d), a felony]. Finally, Mr. Southworth states that it appears that the state acted in good faith in prosecuting the claimant.

The Board concludes that "the evidence is not clear and convincing" that the claimant was innocent as required by § 775.05(4), Stats. The claim is therefore denied.

2. John and Bonnie Weiglein of Brownsville, Wisconsin claim \$3,671.25 in damages to apple trees in their orchard, allegedly caused by road salt application to Hwy. 49. The claimants state that the trees near the highway have suffered salt damage every year since they purchased the orchard in 1999. The claimants state that they have tried to reduce the damage by erecting a plastic barrier but it was unsuccessful. The claimants also state that they have moved the trees significantly farther back from the road since they purchased the orchard. The claimants pay property taxes on all 23 acres and do not believe they should have to remove land from production in order to create a wind break. The claimants estimate that they have 78 damaged trees: 29 trees at 75% loss, 29 trees at 50% loss, and 20 trees at 25% loss. An estimated production of 4 bushels per healthy tree results in the loss of approximately 165 bushels a year. The claimants request reimbursement for the lost bushels at \$22.25 per bushel, the average of the price for fancy apples and seconds.

DOT does not believe there has been any negligence on the part of the state relating to this claim. DOT has a duty to maintain the roadways and remove and control ice and snow as a public service. DOT has made attempts to reduce the amount of salt used on Hwy. 49 without compromising the safety of the motoring public. Within one mile of the orchard is a business that requires a heavy daily volume of semi tractor-trailer traffic, emphasizing the need for road salt as a safety factor to the public and an aid in maintaining an open road to the business. DOC asserts that discontinuing road salt on Hwy. 49 is not a viable option. DOT believes that businesses must exercise prudence when planting fruit trees close to a heavily traveled state highway. This might include the planting of a "barrier" of salt tolerant plants or bushes to stop the uncontrolled flow of airborne salt spray from reaching the fruit trees. (To date, this is the only orchard in the state alleging road salt damage.) DOT notes that the claimants have not submitted tax or production records documenting the alleged loss of production and income. DOT states that it also recommended denial of a

similar claim made by the former owners of this orchard (Robert & Dorothy Messner), citing concerns about the long-term implications of paying the claim and setting a precedent for future annual claims at this or other sites. DOT notes that the Messners stated in their claim that it takes seven to ten years for apple trees to come into full production but that the current claim includes damage to three to five year old trees.

The Board defers decision of the claim at this time, pending discussions between the claimants and the Department of Transportation regarding a long-term solution to this problem. The Board will reconsider this claim at its next Board meeting.

3. Jeff's Northshore Auto of Menasha, Wisconsin claims \$4,994.14 for damages relating to an incorrect Wisconsin vehicle title. In August 2007, the claimant purchased a 2006 Saturn Ion from an owner presenting a clean Wisconsin title. The following day, the claimant took the vehicle to a Saturn dealership for warranty repairs. The dealership informed the claimant that the vehicle was a prior salvage in Louisiana and a Katrina flood vehicle. The Wisconsin title should have noted the salvage and flood damaged brand. The claimant requests reimbursement for the purchase price paid for the vehicle, repairs, gas and various fees, minus the selling price of the vehicle at auction.

DOT recommends payment of this claim. DOT's investigation of the claim finds that a DMV processor made an error and failed to carry forward the brand from the previous title. The processor issued a title stating: "Previously titled in LA" when it should have stated "Previously titled in LA as salvage and flood damaged." When contacted by the claimant, DOT Risk Management sent him a claim form, however the form was not returned within the 120-day time limit and therefore had to be denied by Risk Management.

The Board concludes the claim should be paid in the amount of \$4,994.14 based on equitable principles. The Board further concludes, under authority of § 16.007 (6m), Stats., payment should be made from the Department of Transportation appropriation § 20.395(5)(cq), Stats.

4. The City of Eau Claire, Wisconsin claims \$1,481.04 for unreimbursed whiteway lighting costs on Water Street in Eau Claire for the past four years. The claimant states that whiteway lighting (WWL) is the beam emanating from an electric street lamp and does not include the physical fixtures of the lamp itself. The claimant states that WWL is a service that provides a benefit to property owners, including UW-Eau Claire and other property owners along Water Street. WWL illuminates the sidewalk in front of UW-EC's classroom building entrances and the adjacent parking lot. WWL facilitates vehicle and pedestrian traffic and provides a safety benefit for UW-EC students and faculty. The claimant is charged for electrical consumption to provide WWL and in turn bills property owners along Water Street for their share of the WWL costs through a special assessment. UW-EC has refused to pay the WWL assessment, asserting both that the assessment is disallowed by § 66.0705(1)(b), Stats., and that the claimant has already been reimbursed for WWL through the state's Municipal Services Payments program under § 70.119, Stats.

The claimant believes that § 70.119, Stats., supersedes other statutes relating to payments for municipal services, including § 66.0705(1), Stats. The claimant states however, that even if § 66.0705(1), Stats., is applicable, WWL lighting is an electric service, not an electric power system and therefore does not fall under the scope of the exception provided in § 66.0705(1)(b), Stats. The claimant states that WWL is a service that fits within

the scope of § 70.119, Stats., and that this service is "financed in whole or in part by special fees" as required by the statute. The claimant points to the Program Operation Guidelines, which provide that payments under § 70.119, Stats., may be made either as a user fee or an MSP, but that MSP payments are only allowed for police, fire and solid waste services. Therefore, the claimant believes payment for this service should be made under section (1) of the guidelines, user fee payments.

In addition, the claimant argues that the claim should be paid on equitable principles. The claimant points to the fact that other non-residential owners in the city pay the fee and both the Chippewa Valley Technical College and the Eau Claire DNR offices have reimbursed the city for WWL since 1982. The claimant argues that UW-EC should not be treated differently than other non-residential property owners and other state agencies.

The UW recommends denial of this claim. The UW notes that it has already paid for its share of improvements along Water Street, including the cost of light fixtures, through a special assessment. The UW states that its position is consistent with Attorney General Opinions that exempt state property from special assessments for general maintenance, as opposed to those for local improvements. OAG 72-80 (December 23, 1980).

The UW states that the claimant is inconsistent in its definition of WWL, sometimes claiming that it is the light from the street lamp and sometimes claiming that it is an electrical service. The UW points to the fact that the claimant's own budget documents indicate that WWL assessments are based on the "cost of operating and maintaining the system".

The UW states that if the charge is for the light from the street lamp, it falls within the scope of § 66.0705(1)(b), Stats., which disallows special assessments for "the right, easement or franchise to operate and maintain...electric light or power systems in streets, alleys, parks or highways." However, if the WWL charge is for an "electrical service," the UW believes that it falls within the scope of § 70.119, Stats., and that the claimant is already compensated through the Municipal Services Payments Program provided under that statute. The UW notes that DOA is responsible for negotiating MSP with local governments and that the UW has no authority or role in determining the reimbursement formula. If there are restrictions in the program as to what types of services are reimbursed, that is outside the control of the UW. The UW also states that, pursuant to the previously noted AG Opinion, § 70.119(1), Stats., only applies to services *directly provided* by municipalities. Because the claimant does not generate its own electricity, it cannot charge for the cost of electricity to provide WWL.

Finally, the UW rejects the claimant's argument that, as a matter of equity, the UW should not be treated differently from other property owners along Water Street. The UW notes that following this logic means that state agencies should not be exempt from property taxes simply because non-state property owners pay them. The UW states that the purpose of the MSP program is to provide the equivalent of a property tax assessment and that the claimant has already been compensated under this program.

The Department of Administration's Division of Intergovernmental Relations administers the MSP program and submits this additional information for the Board's consideration. MSP is not the only way that municipalities can receive payments for services they provide. In fact, the Program Operation Guidelines approved by the Legislature for

§ 70.119 clarify that the purpose of the MSP program is to pay for services *financed by local property tax revenue*, not for services funded through special assessments. The guidelines provide that services financed through special charges should be paid as User Fee Payments under section (1) of the guidelines.

The Board concludes the claim must be denied pursuant to § 66.0705(1)(b), Stats. The Board concludes these charges could be negotiated for payment under the Municipal Service Payments Program set forth in § 70.119, Stats. The Board also concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles. (*Member Miller dissenting.*)

5. Theodore H. Paulson of Bloomer, Wisconsin claims \$4,547.38 for return of a Farmland Preservation Program payback. The claimant entered into a Farmland Preservation Agreement (FPA) in 1989, which does not expire until 2014. In 2005, the claimant sold 9.3 acres of his land and DATCP required payback of ten years of the tax credit received for that land, pursuant to § 91.19(6t) and (7), Stats. At the time, the claimant was disabled but did not realize that § 91.19(1m), Stats., allowed permanently disabled individuals to relinquish their FPA without the payback. The claimant did not learn of this exception until 2008, at which time he contacted DATCP to request a refund and was referred to the Claims Board. The claimant states that he was permanently disabled when he sold the land and therefore should be reimbursed for the tax credit payback.

DATCP does not object to payment of this claim, provided that the claimant has appropriate medical documentation that he is totally and permanently disabled. (DATCP notes that the documentation supplied by the claimant with his claim speaks of disability, but does not indicate that the claimant is “totally and permanently disabled” as required by the statute.) DATCP feels obligated to point out that § 91.19(1m), Stats., provides that when the request is made for reasons of permanent disability the entire FPA is relinquished and the tax credit is lost for all the land in the FPA, not just a portion of the land. (Other sections of § 91.19, Stats., provide for release of portions of land under an FPA without loss of the entire FPA, but that option is not available when the request is made due to permanent disability.) In this instance, it appears that the claimant has an additional 180 acres still covered under the FPA for which the tax credit would be lost. DATCP believes that the claimant should consider whether it is more valuable for him to retain the tax credit for his remaining acres than to receive return of the \$4,547.38. Finally, should the board consider payment of this claim, DATCP wishes to note that there was no negligence on the part of the department and that by law, the payback did not come to DATCP but was deposited in the school fund.

The Board concludes that, upon receipt of documentation from the claimant’s physician that he is “totally and permanently disabled,” the claim should be paid in the amount of \$4,547.38 based on equitable principles. The Board further concludes, under authority of § 16.007 (6m), Stats., payment should be made from the Claims Board appropriation § 20.505(4)(d), Stats.

6. Michele A. Windsor of Black River Falls, Wisconsin claims \$316.45 for the cost to replace the windshield on her personal vehicle. The claimant is a DNR employee in the Black River Falls office. The claimant’s assigned state vehicle is an

F150 pickup truck with no topper. The claimant states that she always uses her assigned vehicle, not her personal vehicle, for work purposes. In March 2008, the claimant’s supervisor asked her to transport a large, stuffed snow goose to Madison so it could be displayed in the Madison DNR office. The stuffed goose was very large, with a 5 foot wingspan. There was no state vehicle in Black River Falls large enough to transport the goose and the claimant could not use her assigned pickup truck because it had no topper and the bird could be damaged. The only vehicle large enough to transport the bird to Madison was the claimant’s personal vehicle, a Subaru Outback; therefore, the claimant used her personal vehicle to take the bird to Madison. The claimant states that during the trip back to Black River Falls, a passing semi kicked up a stone, which hit the claimant’s windshield, causing a large chip that spread significantly by the time the claimant got back to Black River Falls. Due to the size of the crack, the claimant’s entire windshield had to be replaced at a cost of \$316.45, an amount less than the claimant’s \$500 insurance deductible.

DNR supports payment of this claim. DNR believes that the circumstances in this case warrant making an exception to the department’s general policy to deny employee claims for damaged personal property. DNR points to the fact that the claimant’s trip was entirely work-related and that she only used her personal vehicle out of necessity, because no suitable DNR vehicle was available. DNR notes that the claimant even received a certificate of non-availability of a state vehicle from her supervisor—a clear indication that using her personal vehicle was the only option. DNR believes one could assume that had a state vehicle been available for use, its windshield would have been damaged instead. DNR believes that the principles of equity dictate that the claimant should not bear the cost of this accident, particularly since she was directed to transport the bird by her supervisor.

The Board concludes the claim should be paid in the amount of \$316.45 based on equitable principles. The Board further concludes, under authority of § 16.007 (6m), Stats., payment should be made from the Department of Natural Resources appropriation § 20.370(1)(ma), Stats.

7. Gabriel Umentum of Waupun, Wisconsin claims \$4,618.17 for reimbursement of legal fees incurred in defense of a criminal charge arising from the performance of his duties as an employee at Waupun Correctional Institution. On April 16, 2007, the claimant transferred inmate DuJuan Walker to a different cell and Walker became resistive. The claimant states that he had difficulty controlling Walker and called for assistance. Walker later filed a complaint against the claimant alleging that he assaulted Walker during the transfer, pushing him face first into a wall and repeatedly punching him in the head. Judge Andrew Bissonnet convened a John Doe proceeding and found “reason to believe” that the claimant had violated § 940.29, Stats., (abuse of residents of penal facilities). The claimant notes that the proof necessary in a John Doe proceeding is very low—a “reason to believe” standard, which is lower than probable cause. The claimant also points to the fact that § 968.26, Stats., which governs John Doe proceedings, does not allow the judge to consider factors that cast doubt on the allegations, such as the complainant’s credibility or the prosecutive merit of the case.

The claimant has been employed by DOC for six years, has received good employee reviews during that time and has no record of any substantial allegations of misconduct or inmate mistreatment. Inmate Walker has numerous felony convictions and a history of disciplinary problems while incarcerated.

Detectives who interviewed Walker on the day of the alleged abuse noted that they saw no “cuts, abrasions, bruises, marks, scratches or any other marking on his face, head, knees or elbows that would reflect an injury he sustained.” It appears that the only person injured during the incident was the claimant, who sustained a bite mark on his arm. The special prosecutor appointed by Judge Bissonnet investigated the allegations and, after reviewing information provided to him by the claimant’s counsel, dismissed the charge. On April 22, 2008, the Circuit Court granted the claimant’s motion to expunge the charges from his record. The claimant states that these charges were directly related to the exercise of his lawful duties as a state employee.

The claimant believes that his attorney’s fees are reasonable and requests reimbursement of the \$1,122.40 he has already paid his attorney plus the remaining balance of \$3,495.77, pursuant to §§ 16.007(5) and 775.11, Stats.

DOC supports payment of this claim. DOC does not dispute the facts as presented by the claimant and notes that the allegations against him could not be proven beyond a reasonable doubt and an Order was issued to expunge the record. DOC agrees that the claim is appropriate to pay pursuant to § 775.11, Stats., that the duties performed by the claimant were those expected of an employee, and that the attorney’s fees are reasonable.

The Board concludes the claim should be paid in the amount of \$4,618.17 based on equitable principles. The Board further concludes, under authority of § 16.007 (6m), Stats., payment should be made from the Department of Corrections appropriation § 20.410(1)(a), Stats.

8. Eugene Cherry of Boscobel, Wisconsin claims \$717.59 for the cost of numerous property items allegedly lost, damaged or improperly destroyed by DOC. In October 2006 the claimant was transferred from Wisconsin Secure Program Facility (WSPF) to Racine Correctional Institution (RCI) and in December 2006 he was transferred back to WSPF. The claimant filed a number of complaints relating to the handling of his property during these transfers. The claimant’s allegations can be summarized as follows: 1) Eyeglasses: a) one pair broken by WSPF during October transfer, b) one pair lost by WSPF during October transfer, and c) one pair lost during December transfer. 2) Broken pitcher and headphones: claimant’s receipts were also lost during his transfers but these items were in good condition and he should receive full reimbursement for them with no depreciation. 3) Shoes: claimant wanted to mail out his extra pair of shoes but WSPF never sent shoes to RCI during October transfer so he could not mail them out and then WSPF improperly destroyed them. 4) Photos, watch, socks and miscellaneous supplies: property missing after December transfer. He did not have access to these items while at RCI because he was in segregation; items were therefore under DOC control. He should be reimbursed for the full value of all items. 5) 50 stamped envelopes: Envelopes missing after December transfer. 50 envelopes are noted on DOC’s property receipt/disposition form but claimant never received them. The guard is lying about making a notation on the form.

DOC recommends denial of this claim. The claimant’s complaints have been fully investigated and responded to, and the claimant has received reimbursement when warranted. DOC’s response to the claimant’s allegations can be summarized as follows: 1) Eyeglasses: a) eyeglasses were already broken when picked up from claimant for inventory, b)

there is no indication of missing glasses, claimant had 2 pair remaining at WSPF and 2 pair were received at RCI, and c) after the claimant’s transfer, staff found broken glasses near the claimant’s old cell and believe he or a neighboring inmate broke the glasses. 2) Broken pitcher and headphones: It does appear that items were broken while under staff control. Claimant received reimbursement of depreciated amount for these items per DOC rules. 3) Shoes: WSPF did not send shoes to RCI because they were over limit for the number of shoes. Claimant was notified that he had 30 days to contact WSPF regarding mailing out the excess pair of shoes. He did not contact WSPF within time limit therefore shoes were destroyed. 4) Photos, watch, socks and miscellaneous supplies: DOC did find discrepancies in the inventory forms and claimant was reimbursed for a number of items in their depreciated amounts per DOC rules. 5) 50 stamped envelopes: The notation “50 envelopes” is on DOC’s property form because when the guard delivered his property, the claimant complained that the envelopes were missing and the guard, who did not have scratch paper, made a note on the form so he would remember to check for the envelopes. DOC did find some evidence that 10 envelopes may have been lost and the claimant was reimbursed for 10 stamped envelopes.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

9. Joseph C. Clark of Waupun, Wisconsin claims \$82.73 for the cost of a watch and razor allegedly lost by DOC personnel. The claimant is an inmate at Waupun Correctional Institution. In February 2007 he was placed in Temporary Lockup status and DOC staff came to inventory and pack his property for storage. The claimant states that when he received the inventory sheet for his property, his watch and razor were missing from the list of packed property. The claimant points to statements from the two DOC officers who packed his property in which they replied “yes” to the question “Did you insure (sic) all my property was packed?” The claimant also points to an affidavit from a fellow inmate who assists the property officers. In his statement Inmate Salazar indicates that he specifically saw the officers pack the claimant’s watch and razor. The claimant submitted numerous requests for interview /information regarding his property. The claimant later filed a complaint regarding his missing watch and razor but the complaint was rejected as past the 14 day time limit. The claimant points to the fact that he filed his complaint within 14 days of his last submitted interview/information request; therefore he does not believe the complaint should be denied as untimely. The claimant appealed but his appeal was denied. The claimant believes that DOC has made several irrelevant excuses for the loss of his property (that it was stolen by another inmate, that it’s the claimant’s fault for not locking the property in his footlocker). The claimant states that if his property had been stolen by another inmate, that inmate would have been punished, which has not happened. Finally, the claimant believes that DOC rules make the institution warden personally responsible for everyone and everything at the institution and therefore regardless of why is property is missing—whether it was stolen by another inmate or lost by DOC staff—DOC is responsible for his damages.

DOC believes that the claimant has provided no evidence to support his allegation that DOC staff lost his property and DOC recommends denial of his claim. DOC notes that neither on the

inventory form nor in their statements to the claimant did the officers who packed his belongings identify a watch or razor as being included in the claimant's property. DOC does not believe it has any obligation to accept the word of Inmate Salazar regarding this matter. DOC believes that the evidence supports the conclusion that the loss of the claimant's property was a result of his own negligence or the actions of another inmate. Inmates are provided with a footlocker and padlock for securing their personal belongings. DOC notes that the Temporary Lockup Property Form filled out by staff indicates that despite the fact that the claimant had a padlock in his possession, his footlocker was not locked when staff arrived to pack his property. DOC states that it responded to the claimant's numerous interview/information requests. DOC notes that although the claimant received the property inventory form on February 5th, he did not mention the missing razor until February 26th and did not file his ICRS complaint until March 11th, long after 14 days had elapsed since he received his inventory form. Finally, DOC notes that the claimant could have lost, loaned or traded his property before he was placed in segregation.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

10. Lashone Jackson of Boscobel, Wisconsin claims \$160.00 for the full cost of a television allegedly improperly destroyed by DOC staff. The claimant is an inmate at Wisconsin Secure Program Facility (WSPF). When he transferred to WSPF from Fox Lake Correctional Institution (FLCI) in October 2006, his television was packed by FLCI staff and sent along with his other property to WSPF. FLCI made no note of any damage to the TV on the claimant's property inventory. When WSPF staff examined the TV several weeks later, they noticed that it was damaged and WSPF staff told the claimant that he would have to mail out the TV. The claimant states he filed an inmate complaint as soon as he was informed of the damage. He argued that he should not have to destroy the TV and requested reimbursement for the cost to repairing it. His complaint was denied and he appealed that denial. The claimant states that he eventually won his appeal and WSPF was found liable for the damage. The claimant then discovered that WSPF staff had destroyed his television while his appeal was pending. The claimant alleges that this action was in violation of WSPF's policy #530.02, and that he should have been given the opportunity to send the TV out for repair. The claimant states that he never consented to the destruction of his TV and because he only received \$40 reimbursement from DOC, he does not have the financial resources to purchase a new TV. The claimant states that the original purchase price was approximately \$200 and he requests reimbursement of the remaining \$160 from DOC.

DOC recommends denial of this claim. DOC does not dispute that it appears that the claimant's television was damaged while under DOC staff control. DOC states that it has a policy governing compensation to inmates for property damage by DOC. This policy establishes a fair and uniform manner of reimbursement. DOC states that, although the claimant was unable to provide a receipt for his TV, the department took his word that he purchased the TV for approximately \$200 in 1998 or 1999. DOC's Property Depreciation Schedule allows 10 useful years of life for TVs, therefore they are depreciated at 10% annually. Because the

television was eight years old at the time of the damage, DOC depreciated it 80% and reimbursed the claimant \$40. This reimbursement was reviewed and affirmed through the inmate complaint process and the department does not believe the claimant is entitled to any further reimbursement.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

11. Mark T. Smith of Boscobel, Wisconsin claims \$18.88 for the cost of items purchased from canteen but not allowed. The claimant is an inmate at the Wisconsin Secure Program Facility (WSPF). The claimant purchased items from the canteen on July 23, 2007. The claimant alleges that he only requested one birthday card on this order but that he was charged for 11 cards and then he was not allowed to keep any of the cards. The cards were destroyed and the claimant was not given the option to mail them out. The claimant points to WSPF's Segregated Status Inmate Handbook, which states, "You are prohibited from purchasing items from the canteen for the purpose of sending items out of the institution with the exception of greeting cards." The claimant therefore believes that DOC should have given him the option to send the cards out, instead of destroying them. The claimant also purchased items on July 31, 2007. The claimant believes that this order should not have been filled, because he was demoted on that same date. The claimant states that money was taken from his account but he was not allowed any food items ordered. The food items were destroyed and he was not given the option to mail them out. The claimant alleges that WSPF is the only institution that does not allow inmates to mail out food items that are designated as contraband. The claimant again points to the SSI Handbook which states, "If you are demoted it will be your responsibility to have food items discarded that are not allowed in the lower level. No food items will be stored or shipped." The claimant interprets this statement to mean that his only option for getting rid of disallowed food is to eat it, which would make no sense. The claimant notes that he never received a contraband receipt for his food items and he believes that DOC staff consumed or re-sold the food instead of destroying it.

DOC recommends denial of this claim. DOC records indicate that at all times relevant to these incidents, the claimant was in disciplinary separation status, which limited the items he could purchase from the canteen. DOC notes that these limits were in place prior to the claimant's July 31, 2007, demotion and that demotion did not change those limits. DOC points to the fact that during this entire period the claimant was not allowed to order food items or birthday cards. The WSPF Segregated Status Inmate Handbook provides that it is the inmate's responsibility to accurately complete his canteen order and that the inmate may receive a conduct report if he orders disallowed items. DOC notes that the canteen order forms are machine-read forms. There is a space to write in the item's description and code and then underneath that space are numbered circles to shade in for the item code and quantity. DOC states that the claimant wrote in the description and code for an item he was allowed and then deliberately shaded the circles with the code for different item, which he was not allowed. The canteen menu for inmates in disciplinary separation does not even contain food items or cards; however, DOC states that it would not have been difficult for the claimant to obtain codes for these items from other inmates. DOC notes

that the claimant received a conduct report for these orders. DOC further states that WSPF policy provides that inmates are “not allowed to mail or send out on a visit any items that [are] purchased through the institution canteen.” DOC states that the exception for greeting cards noted by the claimant applies to mailing out stamped and addressed cards but that inmates are not allowed to send out blank cards in bulk. DOC notes that these rules were developed to keep inmates from purchasing items at the canteen’s low prices and then mailing those items to family members. DOC states that the claimant tried to cheat the system and was caught. DOC believes it is outrageous that he now expects to be reimbursed.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

The Board concludes:

That decision is deferred on the following claim at this time:

John and Bonnie Weiglein

That the following claims are denied:

John A. Rupp
 City of Eau Claire
 Eugene Cherry
 Joseph C. Clark
 Lashone Jackson
 Mark T. Smith

That payment of the below amounts to the identified claimants from the following statutory appropriations is justified under § 16.007, Stats:

Jeff’s Northshore Auto	\$4,994.14	§ 20.395(5)(cq), Stats.
Theodore H. Paulson	\$4,547.38	§ 20.505(4)(d), Stats.
Michele A. Windsor	\$316.45	§ 20.370(1)(ma), Stats.
Gabriel Umentum	\$4,618.17	§ 20.410(1)(a), Stats.

Dated at Madison, Wisconsin this 18th day of November, 2008.

ROBERT HUNTER, Chair
 Representative of the Attorney General

NATE ZOLIK
 Representative of the Governor

CARI ANNE RENLUND, Secretary
 Representative of the Secretary of Administration

MARK MILLER
 Senate Finance Committee

JEFFREY STONE
 Assembly Finance Committee

**State of Wisconsin
 Department of Administration**

November 28, 2008
 The Honorable, The Legislature:

This report is transmitted as required by s. 20.002(11)(f), Wisconsin Statutes, (for distribution to the appropriate standing committees under s. 13.172(3), Wisconsin Statutes) and confirms that the Department of Administration has found it

necessary to exercise the “temporary reallocation of balances” authority provided by this section in order to meet payment responsibilities and cover resulting negative cash balances during the month of October 2008.

On October 1, 2008, the Injured Patients and Families Compensation Fund cash balance closed at a negative \$140.8 million. This negative balance continued through October 31, 2008, when the fund’s cash balance closed at a negative \$137.0 million. The Injured Patients and Families Compensation Fund cash balance reached its intra-month low of a negative \$149.5 million on October 9, 2008. The negative balance was due to the transfer of \$200 million to the Medical Assistance Trust Fund per 2007 Wisconsin Act 20, and the pending liquidation of fund securities necessary to offset this shortfall.

On October 1, 2008, the Workers Compensation Fund cash balance closed at a negative \$1.3 million. This negative balance continued through October 31, 2008, when the fund’s cash balance closed at a negative \$1.4 million (its intra-month low). The negative balance was due to the difference in the timing of revenues and expenditures.

On October 17, 2008, the Conservation Fund cash balance closed at a negative \$57.0 thousand. This negative balance continued through October 30, 2008, when the fund’s cash balance closed at a positive \$6.4 million. The Conservation Fund cash balance reached its intra-month low of a negative \$2.4 million on October 28, 2008. The negative balance was due to a delayed transfer to the fund.

On October 31, 2008, the Mediation Fund cash balance closed at a negative \$2.0 thousand (its intra-month low). The negative balance was due to the difference in the timing of revenues and expenditures.

The Injured Patients and Families Compensation Fund, Workers Compensation Fund, Conservation Fund, and Mediation Fund shortfalls were not in excess of the statutory interfund borrowing limitations and did not exceed the balances of the funds available for interfund borrowing.

The distribution of interest earnings to investment pool participants is based on the average daily balance in the pool and each fund’s share. Therefore, the monthly calculation by the State Controller’s Office will automatically reflect the use of these temporary reallocations of balance authority, and as a result, the funds requiring the use of the authority will effectively bear the interest cost.

Sincerely,
MICHAEL L. MORGAN
 Secretary

Referred to joint committee on **Finance**.

**State of Wisconsin
 Department of Administration**

December 1, 2008

The Honorable, The Legislature:

The Department of Administration has issued its contractual service purchasing report for Fiscal Year 2008 pursuant to 16.705(8), Wis. Stats. This report also includes information on cost-benefit analyses produced by state agencies and campuses during FY08.

Again this year, state agencies reduced contracting costs. State agency contracting decreased by 5%, from \$345.1 million in FY07 to \$326.9 million in FY08. However, when combined with University of Wisconsin System contracting costs, overall

state contracting increased by 7% in FY08, from \$419.6 million in FY07 to \$449.6 million in FY08. This is the first increase in overall contracting costs since FY04.

In addition, this report provides a summary of the more than 293 cost-benefit analyses prepared by state government in FY08. State agencies and campuses are required to conduct a cost-benefit analysis prior to each proposed contractual service procurement over \$25,000.

The Department of Administration is committed to improving ways to provide quality services to Wisconsin citizens as efficiently and cost effectively as possible and we will continue to work on these efforts in our state contracting process.

If you have questions about this report, please contact James Langdon, Deputy Administrator, DOA Division of Enterprise Operations, at 608-267-2715.

Sincerely,
MICHAEL L. MORGAN
 Secretary of Administration

Referred to joint committee on **Finance**.

**REFERRALS AND RECEIPT OF COMMITTEE
 REPORTS CONCERNING PROPOSED
 ADMINISTRATIVE RULES**

The committee on **Commerce, Utilities and Rail** reports and recommends:

Senate Clearinghouse Rule 08-047

Relating to electrical construction.

No action taken.

JEFFREY PLALE
 Chairperson

**Motions Under Senate Rule 98 and Joint Rule 7
 for the Month of November 2008**

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Kanavas, for James Raymond Barrett, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Grothman, for Lester and Bonnie Bartel, on the occasion of being named Grafton's Outstanding Citizens of the Year for 2008.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Lazich, for Gregory James Bluma, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Schultz, for Gene Breihan, on the occasion of his years of service with the Platteville Fire Department protecting his friends, family and neighbors from fire for 50 years.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Darling, for Donald and Rose Marie Briar, on the occasion of celebrating their 50th Anniversary.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Erpenbach, for Ty Christensen, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Legislature on the motion of Senator Lena C. Taylor, for Bishop Sedgwick Daniels, on the occasion of his election to the General Board of Bishops.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Darling, for Bradley Alan Devereux, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Cowles, for Alexander Dickinson, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Legislature on the motion of Senator Vinehout, for Sharon Folcey, on the occasion of her retirement after years of distinguished service as Executive Director of the Sparta Chamber of Commerce.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Harsdorf, for Ms. Mary Halada, on the occasion of her contributions and commitment to the University of Wisconsin-River Falls.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Ellis, for Erik Hammerberg, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Erpenbach, for Nick Hamilton, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Erpenbach, for Glenn Harper, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Schultz, for Andrew Heindl, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Grothman, for Sue Mayer and Mardy McGarry, on the occasion of being named Citizens of the Year for 2008.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Lazich, for Geraldine Mayotte, on the occasion of being the recipient of the 2008 East Troy Family and Community Resource Center Outstanding Citizen of the Year Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Lazich, for Rebecca Meyer, on the occasion of being selected as a finalist for the Presidential Award for Excellence in Mathematics and Science Teaching.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Erpenbach, for Justin Miller, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Ellis, for Nathaniel Murken, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Schultz, for Benjamin Murphy, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Lazich, for Karen Nesbit, on the occasion of being selected as a finalist for the Presidential Award for Excellence in Mathematics and Science Teaching.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Schultz, for Suzi Osterday, on the occasion of her tireless support and leadership to build a strong more prosperous community in Darlington.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Ellis, for Thomas Pebbles, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Erpenbach, for Nathan Perry, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Legislature on the motion of Senator Harsdorf, for Mary Alice Peterson, on the occasion of celebrating her 83rd Birthday shared with family and friends.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Lazich, for Timothy Mitchell Thoren, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Legislature on the motion of Senator Fitzgerald, for Marisa Toepfer, on the occasion of earning and attaining the 4-H Key Award.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Harsdorf, for Mr. Tom Weiss, on the occasion of his retirement after 24 years of dedicated service to the students of University of Wisconsin-River Falls.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Lazich, for Dawn Willert, on the occasion of being the recipient of the 2008 East Troy Family and Community Resource Center Outstanding Citizen of the Year Award.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Erpenbach, for the Wisconsin Heights Girls Varsity Volleyball Team, on the occasion of winning the 2008 Wisconsin Interscholastic Athletics Association Division 3 State Championship.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Grothman, for Cheryl Wozniak, on the occasion of being selected as a finalist for the Presidential Award for Excellence in Mathematics and Science Teaching.

A certificate of condolence by the Wisconsin Senate on the motion of Senator Risser, for the family and friends and colleagues of former State Representative Rebecca Young, on the occasion of expressing our deepest sympathies.