

STATE OF WISCONSIN  
**Senate Journal**  
One–Hundredth Regular Session

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MONDAY, September 12, 2011

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

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**CHIEF CLERK'S ENTRIES**

**AMENDMENTS OFFERED**

Senate substitute amendment 1 to **Senate Bill 5** offered by Senator Darling.

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The Chief Clerk makes the following entries dated **Thursday, September 8, 2011**.

**INTRODUCTION, FIRST READING, AND  
REFERENCE OF PROPOSALS**

Read and referred:

**Senate Joint Resolution 39**

Relating to: commending Gateway Technical College on its 100th anniversary.

By Senators Wanggaard, Kedzie, Wirch, Lazich, S. Coggs, Cowles, Taylor, Lassa and Schultz; cosponsored by Representatives Kerkman, Vos, Turner, Barca, Steinbrink, Craig, Pridemore, Spanbauer, Fields, Strachota, E. Coggs, Sinicki, A. Ott, Jorgensen, Endsley and Mason.

To committee on **Senate Organization**.

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**PETITIONS AND COMMUNICATIONS**

Pursuant to Senate Rule **17 (5)**, Senator Taylor added as a coauthor of **Senate Bill 165**.

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

The committee on **Health** reports and recommends:

**Senate Clearinghouse Rule 11–027**

Relating to background checks and fingerprinting.

No action taken.

*LEAH VUKMIR*  
Chairperson

Referred to joint committee for review of Administrative Rules, pursuant to 227.19(5)(a), Wisconsin Statutes..

The Chief Clerk makes the following entries dated **Friday, September 9, 2011**.

**ADVICE AND CONSENT OF THE SENATE**  
**State of Wisconsin**  
**Department of Public Instruction**

September 4, 2011

The Honorable, The Senate:

Pursuant to s. **15.377(8)**, Wis. Stats., enclosed please find a list of nominees to the Professional Standards Council for Teachers. These individuals were selected based upon organizational recommendations as prescribed in statute. Your confirmation of the appointees is requested.

Sincerely,  
*TONY EVERS*  
State Superintendent

ANDERSON, ARTHUR, of Shorewood, as a member of the Professional Standards Council for Teachers, for the term ending June 30, 2014.

Read and referred to committee on **Education**.

BEGGS, JOSHUA, of Milwaukee, as a member of the Professional Standards Council for Teachers, for the term ending June 30, 2014.

Read and referred to committee on **Education**.

DALLAS, WILLIAM, of Medford, as a member of the Professional Standards Council for Teachers, for the term ending June 30, 2014.

Read and referred to committee on **Education**.

SWAIN, KATHERINE, of Beloit, as a member of the Professional Standards Council for Teachers, for the term ending June 30, 2014.

Read and referred to committee on **Education**.

UNDERWOOD, JULIE, of Madison, as a member of the Professional Standards Council for Teachers, for the term ending June 30, 2014.

Read and referred to committee on **Education**.

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**REPORT OF COMMITTEES**

The committee on **Senate Organization** reports:

Referred to the joint committee on **Finance**, pursuant to Senate Rule **41 (1)(e)**:

**Senate Bill 22**

**Senate Bill 104**

Ayes: 5 – Senators Fitzgerald, Ellis, Grothman, Miller and Hansen.

Noes: 0 – None.

Placed the following proposals on the Senate Calendar of Tuesday, September 13, 2011:

- Senate Resolution 20**
- Senate Joint Resolution 37**
- Senate Joint Resolution 39**
- Senate Bill 110**
- Senate Bill 111**
- Senate Bill 138**
- Senate Bill 139**

Ayes: 5 – Senators Fitzgerald, Ellis, Grothman, Miller and Hansen.

Noes: 0 – None.

*SCOTT FITZGERALD*  
Chairperson

**PETITIONS AND COMMUNICATIONS**

**State of Wisconsin  
Investment Board**

September 1, 2011

The Honorable, The Senate:

Pursuant to s. 1.11(2)(j), Wis. Stats., please distribute this notice to members of the Assembly. The State of Wisconsin Investment Board did not consider any proposals or major actions in Wisconsin during fiscal year 2011 that would have significantly affected the quality of the human environment. Accordingly, the agency was not required to prepare any environmental assessments or impact statements under s. 1.11 Wis. Stats.

Please contact Vicki Hearing at 261–2415 if you have any questions concerning this report.

Sincerely,  
*KEITH BOZARTH*  
Executive Director

**State of Wisconsin  
Claims Board**

September 1, 2011

The Honorable, The Senate:

Enclosed is the report of the State Claims Board covering the claims heard on August 12, 2011.

Those claims approved for payment pursuant to the provisions of s. 16.007 and 755.05 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,  
*GREGORY D. MURRAY*  
Secretary

**STATE OF WISCONSIN CLAIMS BOARD**

**The State of Wisconsin Claims Board conducted hearings at the State Capitol Building in Madison, Wisconsin, on August 12, 2011, upon the following claims:**

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. Wisconsin State Payphones	Natural Resources	\$52,921.87
2. Milwaukee County Department of Health and Human Services, Juan Muniz and Pang Xiong	Children and Families	\$35,764.89
3. Yalonzo R. Hull	Corrections	\$267.50

**The following claims were considered and decided without hearings:**

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
4. Charles Tubbs	Administration	\$73.50
5. Steven N. Winters	Transportation	\$2,249.81
6. Mary Jaques	Revenue	\$1,060.00
7. Tracy J. Lewandowski	Natural Resources	\$8,852.54
8. Lee Alexander Brown	Health Services	\$127.75
9. Lee Alexander Brown	Health Services	\$210.95
10. Lee Alexander Brown	Health Services	\$55.61
11. Gerald Polzin	Corrections	\$634.00
12. Thomas Seeley	Corrections	\$57.86
13. Eric George	Corrections	\$219.99

**1. Wisconsin State Payphones, Inc.** of Brookfield, Wisconsin claims \$52,921.87 for costs related to an alleged breach of contract by DNR. In July 2001, Wisconsin State Payphones (WSP) entered into a contract with DNR to provide payphone service at WI state parks. The contract expired in December 2005 but was renewed for another five years. On June 25, 2009, WSP received a 30–day notice to terminate the contract. WSP alleges that prior to this letter it had no notice from DNR of any problems, deficiencies or billing errors relating to WSP service. WSP alleges that DNR failed to notify them of any breach of contract and failed to give WSP the opportunity to cure any alleged problems, as required by the contract. WSP believes that this constitutes breach of contract by DNR. WSP states that in response to the notice of termination, it tried to get documentation from the department relating to any deficiencies of service but that DNR was unresponsive. WSP notes that when the department eventually did provide “evidence” of problems, that evidence consisted of hearsay statements alleging problems at only three parks. WSP believes that it is evident that the department did not even begin to gather documentation of alleged problems until well after DNR cancelled the contract and after WSP filed a Notice of Claim. WSP points to the fact that, although DNR alleges that the contract manager sent a 30–day right to cure letter in mid–2007, DNR has been unable to produce a copy of that letter. WSP believes that DNR has failed to provide any evidence of poor service or non–functioning phones. WSP states that it provided service to numerous WI state parks for nine years with no indication of problems from DNR and that

DNR's notice of termination came as a complete shock. WSP believes that DNR's real motivation for terminating the contract was budgetary. Finally WSP states that it initially believed the 2005 contract extension expired on 6/30/10; however, WSP has uncovered an email exchange with DNR staff that indicates that both parties understood the extension expired on 12/31/10. WSP requests reimbursement for the remainder of the contract term from July through December 2010.

DNR recommends payment of this claim, but only in the reduced amount of \$3,810. DNR denies that there was no indication of problems. DNR further denies that the contract was cancelled for budgetary reasons. The department states that the only reason for termination of the contract was poor performance by the claimant. DNR states that there were numerous complaints communicated to WSP regarding broken and non-functioning phones, jammed coin boxes, lack of dial tone and other problems at multiple state parks. DNR notes that although the claimant argues that there were zero problems and that they had zero notice of any problems, the claimant also argues that WSP promptly responded to repair requests. (If there were zero problems and zero notice, why would they be making repairs?) DNR states that numerous calls were made to WSP to report problems but eventually their voicemail filled up and stopped taking messages. DNR states that these contacts constitute dozens of verbal right to cure notices, which are allowed under the contract – nothing in the contract requires right to cure notices to be written. DNR states that the contract manager, who is now retired, recalls sending a notice to cure letter in mid-2007. The department has been unable to locate a copy of that letter but again points to the fact that nothing in the contract requires that a right to cure notice be given in writing. Therefore, even if the contract manager's memory is incorrect, there were dozens of verbal right to cure notices provided to WSP. DNR notes that WSP's response to the notice of termination letter, which allegedly came as a complete shock, was not to contact DNR to inquire about the letter, but to immediately file a Notice of Claim. DNR also states that it is untrue that the department was not responsive to WSP's requests for documentation and that there were ongoing settlement discussions conducted by DOJ and the claimant's attorneys. DNR states that although there was a 2005 email exchange referencing a December 2010 end date for the renewal, further evidence shows that by December 2009, both parties agreed that the end date for the renewal was June 30, 2010. DNR believes the claimant has provided insufficient legal basis for why it should receive full payment under the contract when the service provided was poor, unreliable and in many cases non-existent. DNR believes that based on the date of the 30-day termination letter, one can presume that the contract would have ended in July 2009. The department therefore recommends payment for one additional month of service in the amount of \$3,810, based on equitable principles.

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.

**2. Milwaukee County Department of Health & Human Services, Juan Muniz and Pang Xiong** of Milwaukee,

Wisconsin claim \$35,764.89 for current and ongoing costs related to a lawsuit against Milwaukee County and several of its employees. The county has a contract with DCF to provide administrative functions for the Child Care Program. In 2008, while performing its duties under that contract, the county denied renewal of a child care certification application by Shontay Humphries based on a 1988 substantiation finding that the applicant had abused a child. The applicant is now suing Milwaukee County over the county's denial of that certification renewal. The county states that it was following the policies and procedures established by the DCF when it denied the certification renewal and that these procedures did not give the county any discretion. Milwaukee County states that it was acting as an agent of the state when it denied the application. Milwaukee County further states that pursuant to its contract with DCF and § 895.46(1), Stats., DCF is required to defend this lawsuit. DCF has refused to indemnify the county, which has caused the county to incur legal damages in an undetermined amount. The county requests reimbursement for its current costs as well as any future damages it may incur as a result of this lawsuit.

DCF recommends denial of this claim. DCF states that Ms. Humphries' lawsuit challenges the actions of Milwaukee County, not the validity of DCF policies and procedures. Ms. Humphries alleges in her suit that the county denied her application for renewal without notice and failed to comply with an administrative order to process the renewal application, contrary to the Due Process Clause. DCF states that, contrary to the county's assertion, no DCF policy or procedure required the county to deny the application without proper notice or without providing Ms. Humphries the opportunity to contest the denial at a hearing. DCF notes that its contract with the county requires that the county implement DCF's policies and procedures in compliance with the law. DCF also states that its contract does not obligate the state to defend the county in this lawsuit. DCF states that the indemnification clause of the contract specifies that that DCF will defend a suit "challenging the validity of the State's Child Care Program policies or procedures." Ms. Humphries suit challenges specific actions by Milwaukee County, not the policies or procedures of the State Child Care Program. Finally, DCF notes that even if the board accepts the county's argument that DCF should indemnify the county under the contract, the contract cannot override state statutes, which do not give the department the authority to provide for legal representation under these circumstances. This section of the contract is in conflict with the statutes and is therefore invalid and unenforceable.

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.

**3. Brett E. Williams** of Oconomowoc, Wisconsin claims \$70,866.00 for refund of overpayment of taxes. The claimant states that he was a successful owner of a general contracting business for over 15 years. The claimant states that in the 1990's, he developed financial difficulties relating to the economy and personal issues. Eventually, the IRS liquidated all of the claimant's business and personal assets and he lost his livelihood. The claimant states that his accountant also retired at this time and that due to his financial difficulties the claimant

was unable to hire another accountant. The claimant states that he was unable to handle filing the complex business returns without an accountant and admits that he stopped filing tax returns for a number of years (1994–1999). In 2000, the claimant found employment and DOR began garnishing his wages. The claimant states that between the DOR garnishment and his child support payments he was left with little to live on and was unable to hire an accountant. The claimant had several contacts with DOR to discuss lowering the amount of the garnishment. The claimant states that he was never informed that there was a statute of limitations regarding claiming a refund for any tax overpayment resulting from the garnishment. In 2008, the claimant was finally able to hire an accountant and began to file his late tax returns. At that time he discovered that he had overpaid by over \$70,000 and yet DOR alleged he still owed money for two of the tax years. The claimant does not object to paying penalties and interest on his late taxes, however, he believes an additional “penalty” of over \$70,000 is usurious. He requests reimbursement of his overpayment.

DOR recommends denial of this claim. DOR states that this claimant has been a consistent late filer and notes that all of the tax returns relating to his claim (1994–2000) were filed over four years after the original notice of assessment. DOR states that the claimant was informed of the statute of limitations for claiming a refund by the department’s collection agent. DOR states that the statute of limitations prohibits the department from refunding the overpayments for the years 1994–1996 and 1999–2000. DOR notes that there were taxes owed for the 1997 and 1998 tax years and that the department has been collecting on the current balance for those years. The department is willing to compromise and reduce the balance for these years to zero.

**3. Yalonzo R. Hull** of Milwaukee, Wisconsin claims \$267.50 for the value of personal property destroyed in a fire. On August 17, 2010, the claimant reported the DOC office on Capitol Drive in Milwaukee, Wisconsin as required by his probation. He was taken into custody and his personal property was taken by the Probation and Parole Agent. On August 24, 2011, the Capitol Drive DOC office was destroyed by fire and the claimant’s personal items were destroyed. The claimant requests reimbursement for the value of his wallet, driver’s license, bus ticket and birth certificate.

DOC recommends denial of this claim. When the claimant reported to his Probation and Parole Agent on August 17, 2010, a urinalysis was conducted pursuant to the rules of his supervision. The claimant’s urinalysis results tested positive for use of both cocaine and marijuana and the claimant was taken into custody. DOC states that it is not the custodian of property of offenders who are in jail. DOC notes that at no time did the claimant send someone to the office to pick up his property. DOC also notes that the claimant brought items he knew were not allowed in jail to the office visit, with the full knowledge that a urinalysis would be conducted and that he had consumed illegal substances which would show up on the test. DOC believes that this shows the claimant has not come before the Claims Board with “clean hands” and that the claimant should not be allowed to profit from his own misconduct. Finally, DOC believes that the claimant has greatly exaggerated the value of his property in his claim before the board. The DOC Probation and Parole agent noted that the wallet was old

and worn, and the cell phone appeared to be cheap. DOC also points to the fact that the claimant is requesting \$28 to replace his driver’s license, when DOT records show a replacement license only costs \$14. DOC believes the claimant’s own criminal behavior led to the loss of his property and that he is attempting to perpetrate a fraud on the board by over-valuing his property. DOC believes the claim should therefore be denied.

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.

**4. Charles Tubbs, Sr.** of Madison, Wisconsin claims \$73.50 for the cost of replacing eyeglasses broken while at work. The claimant is employed as Chief of the Capitol Police Department. He states that on October 19, 2010, a bomb threat was made against the State Capitol Building. The threat necessitated evacuation of the Capitol building. The claimant states that during the clearing of the building, his glasses fell to the floor and the right lens was broken. The claimant states that the glasses could not be repaired and had to be replaced. He requests reimbursement for the cost of replacing his glasses.

DOA recommends payment of this claim. Although it does not appear that the department was in any way negligent in this situation, because the claimant’s glasses were broken while he was exercising his job duties, the department believes he should be reimbursed based on equitable principles.

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.

(Member Murray not participating. Members Means, Hagedorn and Strachota dissenting.)

**5. Steven N. Winters** of Reedsburg, Wisconsin claims \$2,249.81 for the cost of installation of a new culvert, allegedly required due to a DOT road project. As part of a 2006 improvement project on Hwy. 23, DOT replaced a pre-existing 30” culvert with a 42” culvert. The claimant states that he expressed concerns to the project foreman at the time, that the larger culvert would increase the volume of water which flowed to his property. The claimant states he had an 18” culvert that had functioned perfectly for 29 years, funneling the water that would flow from Hwy. 23, even during heavy spring rains or periods of rapid snow melt. The claimant states that he expressed concern that his 18” culvert would not be able to handle the increased flow generated by the larger culvert being installed by DOT. The claimant states that DOT reassured him there would be no problem. The claimant states that his driveway has been washed out 3 times in the past two years. In June 2008, the claimant was reimbursed by FEMA for damages from two washouts. The claimant’s driveway again washed out in July 2010. The claimant had his 18” culvert replaced with a 30” culvert. The claimant believes that the repeated driveway washouts were caused by DOT’s 2006 project and he requests reimbursement for the cost of installing the larger culvert in order to prevent future damage to his property.

DOT recommends denial of this claim. DOT notes that the claimant’s driveway is located on Coon Bluff Road, which is a

town road over which DOT has no responsibility. DOT states that the highway project referenced by the claimant is quite some distance away from his property and was completed several years before the claimant's driveway washed out. DOT states that, contrary to the claimant's assertion, culvert pipes do not "generate" flows, they convey naturally occurring flows. DOT believes that the driveway washouts are more likely the result of unusually heavy rains. DOT notes that in the years since completion of the Hwy. 23 project there have been a number of well documented extreme rainfall events in the area and that the rainfall in early June 2008 was considered a 100 year storm (hence the claimant's eligibility for FEMA reimbursement). DOT also states that it conducts hydrologic studies in conjunction with its highway projects in order to assure adequate drainage. The department denies any responsibility for the claimed damages and recommends denial of this claim.

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.

**6. Mary Jaques** of Port Credit, Ontario, Canada claims \$1,060.00 for refund of an estimated tax payment made for 2005. In January 2007, the claimant submitted payment for 2005 estimated Wisconsin individual income tax. The claimant later realized that she did not have to pay any 2005 WI income tax because she had moved to Canada in September 2004. She contacted DOR to request a refund but DOR denied her request because she was four months past the statute of limitations. She requests reimbursement for her estimated tax payment.

DOR recommends denial of this claim. Pursuant to § 71.75(2), Wis. Stats., the statutory deadline for the claimant to request her refund would have been April 17, 2010. The department received the claimant's request for refund on August 8, 2010. Because the claim for refund was filed after the 4-year statute of limitations had expired, DOR denied the claim for refund.

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.

**7. Tracy J. Lewandowski** of Mukwonago, Wisconsin claims \$8,852.54 for uninsured medical bills and loss of work allegedly caused due to an injury sustained at Ottawa Lake Campground in the Kettle Moraine State Forest on September 10, 2010. The claimant was visiting at the campground host's campsite. She was attempting to untangle three dogs tied up at the site when she stepped into a hole that was covered by leaves. The claimant fell and injured her elbow. EMS was called and the claimant was transported to the hospital. Her injury required surgery and extensive physical therapy. The claimant states that the hole she stepped into was left after a grill was removed at the host site. The campground host (Degner) stated that he intended to fill in the holes with gravel after removal of the grill. The campground assistant manager (Wessberg) stated that he had "pushed some of the dirt around the edge back into the holes" after he and the host removed the grill, but the holes were not completely filled in until after the claimant's accident.

The claimant requests reimbursement for the portion of her medical bills not covered by insurance (\$1,144.70). She also requests reimbursement for 328 hours of sick leave she was required to use while recovering from her injury (\$7,707.84). The claimant states that she wishes to pay this money back into her sick leave "bank" to recover the sick time she used.

DNR recommends payment of this claim in the reduced amount of \$1,144.70. Although there is some discrepancy regarding exactly when the grill was removed (Degner said August, Wessberg said 2-3 days prior to the accident), both Degner and Wessberg indicated that the plan was to fill the holes with gravel, which obviously did not occur until after the claimant's accident. DNR points to the fact that the state has no legal liability in this situation due to Wisconsin's Recreational Immunity Law, which grants immunity unless the injury was caused by a malicious act. DNR believes that failure to fill in the holes was an oversight but clearly not a malicious act. Despite the lack of legal liability, DNR believes that because the hole was not naturally occurring, equitable principles suggest some compensation. DNR notes that the claimant's leave from work was covered by paid sick time provided by her employer. DNR therefore believes the claimant did not suffer any "lost wages" and should not be compensated for this portion of her claim. DNR believes there is a basis in equity to pay the claimant's uninsured medical expenses and therefore recommends payment of the claim in the reduced amount of \$1,144.70.

The Board concludes the claim should be paid in the reduced amount of \$500.00 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)(ea), Stats.

**8. Lee Alexander Brown** of Mauston, Wisconsin claims \$127.75 for costs to repair a radio and replacement value of the radio and a watch destroyed as contraband by DHS. The claimant is detained at Sand Ridge Secure Treatment Center (SRSTC). When the claimant arrived at SRSTC in May 2009, the staff inventoried his property. SRSTC staff informed the claimant that his radio did not work and gave him 45 days to either have it repaired or mailed out of the institution to a family member. The claimant agrees that the tape player and jack on the radio were broken but alleges that the radio itself worked fine. Pursuant to staff instructions, the claimant sent the radio out to be repaired. The repair shop fixed the microphone jack but said it was not possible to fix the tape player due to lack of parts. The claimant paid \$44 for the repair. The claimant states that he also paid \$5 to have the "mic and recording disabled." The claimant states that SRSTC staff originally approved his request to send the radio to a family member but later denied the request because he did not have the funds to mail out the radio. The radio was destroyed. In October 2009, SRSTC staff conducted a room search and told the claimant his watch was broken (the stem pulled out completely and according to staff had a "sharp needlelike point"). Staff told the claimant he had 45 days to either send the watch for repair or mail it out to a family member. The claimant did not have funds to either repair or mail out the watch and it was destroyed. The claimant attempted to grieve both decisions. He believes the confiscation and destruction of his property was in retaliation for the many complaints he has filed against DHS staff. He alleges that DHS did not properly follow the grievance

procedures and made arbitrary decisions about his property. The claimant also alleges that, although he is indigent, DHS has refused to grant him indigent status, which would have allowed him to mail out his property as an unpaid obligation. He requests reimbursement for replacement of the watch and radio and the cost of the radio repairs.

DHS recommends denial of this claim. DHS states that it followed proper procedures in confiscating the claimant's property and throughout the grievance process. DHS notes that the claimant only pursued the Stage 1 grievance process and failed to pursue Stage 2–4 of the grievance process for both items of property. DHS states that it has policies in place to ensure treatment of property in a fair and consistent manner. Policy SR–115 provides that “Contraband property is not permitted. Excess property or any altered, damaged, unclaimed or worn out property is considered contraband?” The claimant's property was confiscated pursuant to this policy. DHS states that the claimant was allowed 45 days to repair the property or have it picked up by a family member. The claimant's radio was not able to be repaired and the claimant failed to make any attempt to have the watch repaired. Because the claimant failed to have the property properly repaired or sent to someone outside the institution within the 45 day time period, the claimant's property was destroyed. DHS believes there was no violation of the claimant's rights and that the state has no liability to replace his property.

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. Lee Alexander Brown** of Mauston, Wisconsin claims \$210.95 for replacement value of a television destroyed as contraband by DHS. The claimant is detained at Sand Ridge Secure Treatment Center (SRSTC). On May 21, 2010, SRSTC staff conducted a room search and removed the claimant's television because it did not work. The claimant states that the TV only needed a picture adjustment and that it could have been adjusted by the staff if they had opened the back panel of the TV. The claimant was told he had 30 days to either have the television repaired or mailed out of the institution. The claimant did not have the money to repair or mail out the TV. He believes that he should have been allowed to have it repaired or sent out as an unpaid obligation but that he was not given the opportunity to do so. SRSTC staff destroyed the claimant's television after 30 days. The claimant requests reimbursement for the cost of his television.

DHS recommends denial of this claim. DHS states that it followed proper procedures in confiscating the claimant's television and throughout the grievance process. DHS notes that the claimant only pursued the grievance process through Stage 2 and failed to pursue Stage 3–4 of the grievance process. DHS states that it has policies in place to ensure treatment of property in a fair and consistent manner. Policy SR–115 provides that “Contraband property is not permitted. Excess property or any altered, damaged, unclaimed or worn out property is considered contraband?” The claimant's television was confiscated pursuant to this policy. DHS states that the claimant was allowed 30 days to repair the TV or have it picked up by a family member. Because the claimant failed to have the

TV repaired or sent to someone outside the institution within the 30 day time period, the claimant's television was destroyed. DHS believes there was no violation of the claimant's rights and the state has no liability to replace his television.

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. Lee Alexander Brown** of Mauston, Wisconsin claims \$55.61 for the cost of legal supplies incurred because of DHS refusal to grant the claimant indigent status. The claimant is confined at Sand Ridge Secure Treatment Center (SRSTC) as a Sexually Violent Person (SVP). The claimant alleges that the court ordered his commitment to a secure “mental health facility” and that SRSTC does not provide mental health or psychological services and therefore is not a mental health facility. The claimant alleges that placement at SRSTC requires and individual's informed, written consent to participate in an individualized treatment plan and that SRSTC has not provided him with such a treatment plan. The claimant states that SRSTC's therapeutic work program is part of the SVP treatment plan. Individuals who do not participate in the SVP treatment plan are ineligible to earn the higher wages and work hours available in the therapeutic work program. The claimant states he does not consent to participate in the SVP treatment plan and therefore his work options are very limited. The claimant believes that he should be granted indigent status, which would provide him with indigent payments to assist with the costs of his legal supplies and telephone calls. The claimant believes that his rights are governed by Chapter 980, not SRSTC's treatment policies and that he cannot be denied indigent status based on his refusal to participate in the SVP therapeutic work program.

DHS recommends denial of this claim. DHS states that the claimant has been found to be a sexually violent person and was committed to the “control, care and treatment” of the department. DHS states that it has established procedures to achieve security and treatment goals. DHS Policy SR–359 Indigent Patient Cash Allowances provides that if a patient is capable of work they will be offered employment. SR–359 further states, “Indigent patients who refuse to accept employment opportunities offered them by SRSTC shall be ineligible to receive indigent payments.” DHS states that the claimant is able to work, has been offered employment opportunities, and refuses to work. Pursuant to SR–359, the claimant is therefore ineligible for indigent payments. DHS further notes that the claimant's indigent status has been adjudicated seven times through SRSTC's administrative grievance procedures. DHS believes there has been no violation of the claimant's rights and that the claim should be denied.

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. Gerald Polzin** of Green Bay, Wisconsin claims \$634.00 for lost wages allegedly incurred because of DOC misconduct. The claimant is an inmate at Green Bay Correctional Institution

(GBCI). He was employed in the kitchen where he earned \$0.42 per hour. On March 12, 2010, the claimant was found guilty of a major rule violation and was sentenced to 180 days of Disciplinary Separation (segregation). Although it was not specified as part of the claimant's discipline, the claimant lost his job in the kitchen. The claimant states that GBCI Policy 309.01–02 requires that DOC staff complete form DOC–1408 when they remove an inmate from a job. The claimant states that DOC never completed form DOC–1408 and therefore he was not able to appeal the loss of his job. DOC argues that Administrative Rule DOC 303.70(9) is an absolute prohibition against inmates earning wages while in Disciplinary Separation, however, the claimant points to the fact that the language of this rule states that inmates “may” not earn compensation, it does not state that they “shall” not. The claimant believes that this language is clearly discretionary and therefore does not constitute an absolute prohibition as DOC alleges. The claimant also notes that while DOC argues that Chapter 303 of the Administrative Code does not require DOC to fill out form DOC–1408, GBCI Policy 309.01–02 does require DOC to do so in every instance of “work/program placement, removals, transfers and refusals” as stated on the form. The claimant notes that DOC's response pointedly ignores GBCI Policy 309.01–02. Finally, the claimant responds to DOC's argument that he does not bring this claim with “clean hands” and should not be able to profit from his own misconduct. The claimant states that he is not bringing this claim because of his infraction but because DOC failed to follow its own rules. The claimant believes that the misconduct giving rise to this claim is DOC's and he requests reimbursement for lost wages as outlined in his claim materials.

DOC recommends denial of this claim. The claimant admitted he was guilty of a major disciplinary violation and was sentenced to 180 days of Disciplinary Separation. While in Disciplinary Separation, he was obviously unable to perform his job. DOC states that pursuant to Wis. Admin. Code § 303.70(9), inmates in Disciplinary Separation are prohibited from earning compensation. DOC notes that nothing in Chapter 303 requires that DOC complete form DOC–1408; it is a complete prohibition against Disciplinary Separation inmates earning wages, with no exceptions. DOC also notes that the claimant does not bring this claim before the board with “clean hands.” There is abundant case law demonstrating that a person should not be allowed to profit from his own wrongdoing. DOC states that it was the claimant's own unlawful conduct, which he admitted, that was the cause of his job loss. DOC believes that he should not now be allowed to profit from his misconduct. DOC believes this claim is without merit and should be denied.

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.

**12. Thomas Seeley** of Redgranite, Wisconsin claims \$57.86 for remaining value of a watch and a watch strap after a DOC reimbursement allegedly based on an incorrect depreciated value. The claimant is an inmate at Redgranite Correctional Institution. In September 2010, he was placed in temporary lock-up and his personal property was inventoried

and packed by DOC staff. When the claimant returned from lock-up and received his property, he noted that his watch was missing. He contacted DOC staff, who acknowledged that they recalled seeing his watch when packing his property. DOC conducted an investigation and determined that the watch had apparently been lost while under DOC control. The claimant submitted receipts showing the value of the original watch (\$63.75) and a replacement watchband he had purchased four years later (\$14.60). DOC depreciated the watch and band based on a useful life of five years and reimbursed the claimant \$20.49. The claimant points to the fact that DOC's Inmate Property Depreciation Schedule states that the value of items made of high-grade plastics is 4% per year. The claimant believes that the DOC incorrectly and unfairly depreciated his property and requests reimbursement for the remaining value.

DOC recommends denial of this claim. DOC does not dispute that the claimant's property was lost while under the control of DOC staff. DOC uses an Inmate Property Depreciation Schedule to ensure that inmates are fairly reimbursed for any property lost or damaged by DOC staff. Pursuant to this policy, watches and watchbands are depreciated over the course of five years. Based on that policy, the watch had 1.5 years of remaining useful life and the watchband had 4 years 10 months remaining useful life. DOC notes that the claimant replaced the original watchband after four years, which indicates that the department's 5 year depreciation schedule is more than fair. The claimant was reimbursed \$20.49 based on this schedule. DOC believes that the claimant has been fairly reimbursed for his property based on DOC policy and that the claim should be denied.

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.

**13. Eric George of Boscobel, Wisconsin** claims \$219.99 for replacement value of a television allegedly broken by DOC staff. In December 2010, the claimant was an inmate at Green Bay Correctional Institution. He states that on December 30, 2010, two correctional officers entered his cell and extracted him, during which one officer knocked the claimant's television off his desk. The claimant states that he was later informed by the property officer packing up his belongings that the TV would not turn on. Because the TV was no longer working, DOC would not allow the claimant to keep it and it was disposed of. The claimant alleges that the television worked fine before it was knocked off the desk. He requests reimbursement for the replacement value of the TV.

DOC recommends denial of this claim. DOC states that on the date of this incident, both the claimant and his cell mate refused a direct order from correctional officers to turn on their cell light and come to the front of their cell. DOC states that while his cell mate attempted to block their view, the correctional officers witnessed the claimant flushing contraband down the toilet. DOC states that when the officers entered the cell, the claimant resisted and did not comply with their orders. The claimant was given two conduct reports related to the incident. DOC states that there is no evidence that the TV was working before the incident and no evidence that DOC staff damaged the television during the extraction. DOC

notes that “the propensity of prisoners to lie and harass has been judicially noted.” DOC further states that, even if the television was knocked over and damaged as the claimant alleges, such damage would have occurred during the course of a cell entry that was necessitated by the claimant’s own conduct. Had the claimant and his cell mate obeyed staff orders, this incident would not have occurred. DOC points to *Colon v. Schneider*, which supports the idea that the fault for any damage resulting from the use of force lies directly with the disobedient inmate. Finally, DOC points to numerous cases which provide that a person should not be allowed to profit from his own wrongdoing. DOC believes that the claimant has not come before the Claims Board with “clean hands” and that any alleged damage to the television was clearly caused by his own refusal to follow orders.

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 the following claims are denied:**

Wisconsin State Payphones  
Milwaukee County, J. Muniz & P. Xiong  
Yalonzo R. Hull  
Charles Tubbs  
Steven N. Winters  
Mary Jaques  
Lee Alexander Brown  
Gerald Polzin  
Thomas Seeley  
Eric George

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

Tracy J. Lewandowski \$500.00 § 20.370(1)(ea), Stats.

**Dated at Madison, Wisconsin this 12th day of August, 2011.**

*STEVE MEANS*

Chair, Representative of the Attorney General

*GREGORY D. MURRAY*

Secretary, Representative of the Secretary of Administration

*PAMELA GALLOWAY*

Senate Finance Committee

*PATRICIA STRACHOTA*

Assembly Finance Committee

*BRIAN HAGEDORN*

Representative of the Governor

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**State of Wisconsin  
Government Accountability Board**

September 6, 2011

The Honorable, The Senate:

The following lobbyists have been authorized to act on behalf of the organizations set opposite their names.

For more detailed information about these lobbyists and organizations and a complete list of organizations and people authorized to lobby the 2011–2012 session of the legislature, visit the Government Accountability Board’s web site at <http://gab.wi.gov/>

Foti, Steven	National Seating & Mobility, Inc.
Horkan, Peter	National Seating & Mobility, Inc.
Petersen, Eric J	Capital Midwest Advisors, LLC
Scarce, Dena	Medtronic, Inc.

Also available from the Wisconsin Government Accountability Board are reports identifying the amount and value of time state agencies have spent to affect legislative action and reports of expenditures for lobbying activities filed by organizations that employ lobbyists.

Sincerely,

*KEVIN KENNEDY*

Director and General Counsel

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