

1999 ASSEMBLY BILL 38

January 19, 1999 – Introduced by Representative LADWIG. Referred to Committee on Assembly Organization.

1 **AN ACT relating to:** the expenditure of \$1,277,306 from moneys appropriated to
2 the department of transportation for payment of a claim against the state made
3 by James Cape and Sons Company.

Analysis by the Legislative Reference Bureau

This bill directs expenditure of \$1,277,306 from moneys appropriated to the department of transportation (DOT) in payment of a claim made by James Cape and Sons Company against DOT. In 1992 and 1993, the claimant performed work for DOT under contract for highway improvements at the intersection of I 94 and STH 156 in Kenosha County. The claimant alleges that it performed additional work on this project and incurred related costs that were not contemplated by its contract with DOT. The claimant alleges that these costs were necessitated by delays, design errors, inconsistent direction and premature suspension of part of its work by DOT, which delayed its anticipated completion dates for parts of the project. The costs included \$956,363 in direct costs for pavement spread loss and cold weather protection, extended equipment costs, additional mobilization costs and dirt rehandling, \$125,984 in overhead costs, together with \$194,959 for the estimated costs of preparing this claim, additional bonding costs and profit on all costs except bonding costs (total = \$1,277,306). DOT alleges that it approved a revised work schedule for the project submitted by the claimant, but the claimant failed to adhere to its revised schedule, and DOT acted reasonably and within its authority under the contract in suspending work for the winter. On May 27, 1998, the claims board recommended denial of this claim (see 1997 *Senate Journal*, pp. 723-724).

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1. Claim against the state.** There is directed to be expended from
2 the appropriation account under section 20.395 (3) (bq), (br) or (bx) of the statutes,
3 or any combination thereof, as determined by the department of transportation,
4 \$1,277,306 in payment of a claim against the state made by James Cape and Sons
5 Company, Racine, Wisconsin, to compensate it for the costs of additional work and
6 related costs that were not contemplated under its contract with the department of
7 transportation in connection with improvements to I 94 and STH 165 in Kenosha
8 County in 1992 and 1993. Acceptance of this payment operates as a full and complete
9 release to this state and its officers, employees and agents from any further liability
10 to the claimant resulting from the performance of this work.

11

(END)