

1999 DRAFTING REQUEST

Bill

Received: **12/09/1999**

Received By: **kuesejt**

Wanted: **Soon**

Identical to LRB:

For: **Sheryl Albers 6-1743**

By/Representing: **Patricia Reardon - Claims Board**

This file may be shown to any legislator: NO

Drafter: **kuesejt**

May Contact:

Alt. Drafters:

Subject: **State Finance - claims agnst st**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

City of West Allis claim #1

Instructions:

Per board recommendation, 10/19/99.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Tvped</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/2	kuesej t 01/03/2000	jgeller 01/03/2000	jfrantze 01/03/2000	_____	lrb-docadmin 01/03/2000	lrb-docadmin 01/07/2000	

FE Sent For:

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I?/1	kuesejt	12/20 King	12/21 Jt	12/22 Km			

FE Sent For:

<END>



state of Wisconsin • CLAIMS BOARD

101 E. Wilson Street • Post Office Box 7864 • Madison, Wisconsin 53707-7864 • 608-264-9595 • Patricia.Reardon@doa.state.wi.us

DATE: December 6, 1999

TO: Jeffrey Kuesel
Legislative Reference Bureau

FROM: Patricia A. Reardon *PR*
Program Assistant

RE: Drafting of Claims Legislation

Attached, please find a copy of the proceedings from the meeting held by the State Claims Board on October 7, 1999. At that time, the Board recommended that the following claims be paid:

Robert & Dorothy Messner	\$9,926.00
City of West Allis	\$13,785.25
City of West Allis	\$56,300.00
Walworth County	\$76,150.00

The Claims Board members would appreciate it if you would draft the necessary legislation for this claim. Representative Sheryl Albers will sponsor the bill. Thank you for your assistance in this matter.

states that PEFCA claimants frequently claim only a portion of the charges on an individual invoice, therefore, it was not at all unusual that the canceled check submitted did not cover the entire invoice. The Department's claim reviewer would have had no way of knowing that another cancelled check existed, which was mistakenly not included in the claim. The Department would have had no reason to call the claim preparer looking for another check as the claimant believes it should. Furthermore, if the Department made a call to every claimant whose claim appeared as though it might not be complete, it would cause substantial delays in the processing of PEFCA claim. The check was not included due to the claimants' own error and the state should not be held responsible for that error or for interest costs already covered by a previous settlement. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles. *Member Albers dissenting.*

4. Robert and Dorothy Messner of Brownsville, Wisconsin claim **\$9,926.00** for damages to apple trees in their orchard allegedly caused by road salt application to Hwy. 49 by the Department of Transportation. The claimants state that they have 136 trees with damage ranging from complete destruction to 25% loss of production, with the most severely damaged trees occurring in the rows closest to Hwy. 49. The claimants submit a letter from Plant Pathologist and UW Professor Patricia McManus, who concurs with the **claimants'** assertion that their damage was caused by road salt on **Hwy. 49**. The claimants state that they have lost thousands of dollars in production losses due to road salt damage since they purchased the orchard in 1980. The Department of Transportation recommends denial of this claim. The claimants have provided the written opinion of UW Plant Pathologist Patricia McManus, in which she concluded that the observed damage to the orchard is consistent with salt damage and therefore must have been caused by road salt. Ms. McManus reports that at the time she visited the orchard she observed "**no** signs or symptoms indicating that insects or disease were responsible for the decline and death of trees". However her report fails to offer evidence or sampling results in support of this theory. The claimants have submitted production and tax records showing an alleged drop in production and income, however, they have submitted no proof to show that the drop is directly and solely caused by the use of road salt on **Hwy. 49**. The DOT has a duty to maintain the roadways and remove and control ice and snow as a service to the public. The Department believes that businesses must exercise prudent planting practices when planting fruit trees close to a heavily traveled state highway. In some cases, this may 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. When the DOT became aware of the claimants' concerns, every attempt was made 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 volume of semi tractor-trailer traffic daily, emphasizing the need for road salt as a safety factor to the public and an aid in maintaining an open road to the business. Discontinuing road salt on Hwy. 49 is not a viable option. The DOT believes that the board should consider the long-term implications of paying this claim and setting a precedent for future annual claims at this site and others around the state. The board recommends that the claim be paid in the amount of **\$9,926.00** based on equitable principles.

5. The City of West Allis, Wisconsin claims **\$13,785.25** for damages related to an error made by a DOT employe related to a road improvement project. The project agreement split various costs of the project with the State and the Federal Highway Administration (FHWA) paying 80% and the City paying 20%. When the right-of-way acquisition began, the claimant understood that all state and federal approvals were in place. However, the request for federal authorization of real estate funds was inadvertently never submitted by the DOT. The DOT employe responsible for submitting the authorization forms was apparently seriously ill at the time this oversight occurred. The claimant

proceeded to acquire the necessary right-of-way in good faith and in full compliance of all other state and federal guidelines under the assumption that authorizations were in place. The oversight in federal authorization was discovered when the city attempted to seek reimbursement from FWHA. FWHA has denied the city reimbursement because prior authorization was not received according to their policy. The city requests reimbursement of its real estate costs related to the project, which were incurred due to DOT's error. The DOT recommends payment of this claim. The required request for federal authorization of real estate funds was not submitted due to the illness of a state employe, who has since taken a disability retirement. The error was not discovered until years later, when the city attempted to seek reimbursement. This claim has been fully investigated by the DOT and negligence has been found on the part of a DOT employe. However, it has been determined that the DOT does not have legal authority to directly reimburse the city for these costs. The Department therefore requests that the Claims Board reimburse the claimant for their real estate costs. The board recommends that the claim be paid in the amount of **\$13,785.25** based on equitable principles.

6. The City of West Allis, Wisconsin claims **\$56,300.00** for damages related to an error made by a DOT employe related to a road improvement project in the City of West Allis. The project agreement split various costs of the project with the State and the Federal Highway Administration (FWHA) paying 80% and the City paying 20%. When the right-of-way acquisition began, the claimant understood that all state and federal approvals were in place. However, the request for federal authorization of real estate funds was inadvertently never submitted by the DOT. The DOT employe responsible for submitting the authorization forms was apparently seriously ill at the time this oversight occurred. The claimant proceeded to acquire the necessary right-of-way in good faith and in full compliance of all other state and federal guidelines under the assumption that authorizations were in place. The oversight in federal authorization was discovered when the city attempted to seek reimbursement from FWHA. FWHA has denied the city reimbursement because prior authorization was not received according to their policy. The city requests reimbursement of its real estate costs related to the project, which were incurred due to DOT's error. The DOT recommends payment of this claim. The required request for federal authorization of real estate funds was not submitted due to the illness of a state employe, who has since taken a disability retirement. The error was not discovered until years later, when the city attempted to seek reimbursement. This claim has been fully investigated by the DOT and negligence has been found on the part of a DOT employe. However, it has been determined that the DOT does not have legal authority to directly reimburse the city for these costs. The Department therefore requests that the Claims Board reimburse the claimant for their real estate costs. The board recommends that the claim be paid in the amount of **\$56,300.00** based on equitable principles.

7. Nemece Bamingham Foster Care of Ashland, Wisconsin claims **\$11,008.66** for damages allegedly caused by the failure of the Department of Health and Family Services to adequately oversee Ashland County's handling of the foster parent program. The claimant alleges that he filed a claim for damages caused by his foster child and that Ashland County failed to process the claim in a timely manner, lost receipts, and gave him incorrect information regarding reimbursable amounts for clothing. The claimant also states that Ashland County promised to provide respite care or payment, to pay for mileage, and to pay for damage to the foster child's glasses but did not. The claimant alleges that he contacted the DHFS and asked them to step in and help resolve the dispute with Ashland County but that DHFS personnel repeatedly told him that they had no jurisdiction over Ashland County. The claimant feels that the state should have done something to make Ashland County respond to his complaints and process his damage claims correctly. He requests reimbursement for the following damages: \$1489.50 for property damage by foster child, 57932.16 for respite care payment promised by Ashland County, \$26.00 for damaged glasses, 5200.00 for mileage to take foster

years later, when the county attempted to seek reimbursement. This claim has been fully investigated by the DOT and negligence has been found on the part of a DOT employe. However, it has been determined that the DOT does not have legal authority to directly reimburse the county for these costs. The Department therefore requests that the Claims Board reimburse the claimant for their real estate costs. The board recommends that the claim be paid in the amount of \$76,150.00 based on equitable principles.

The Board concludes:

1. The claims of the following claimants should be denied:

Madison Metro/Great Lakes Electrical
Garver Feed & Supply
Nemec **Barningham** Foster Care
Reuben Johnson & Son, Inc.
Scott & Faith Fechmeyer

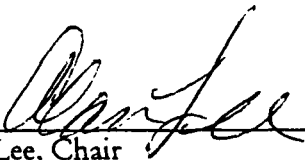
2. Payment of the following amounts to the following claimants is justified under s. 16.007, Stats:

Julie Nickel \$251.62


The Board recommends:

- 1. Payment of \$9,926.00 to Robert and Dorothy Messner for damages to their orchard.
- 2. Payment of \$13,785.25 to the City of West Allis, Wisconsin for real estate costs.
- 3. Payment of \$56,300.00 to the City of West Allis, Wisconsin for real estate costs.
- 4. Payment of \$76,150.00 to Walworth County, Wisconsin for real estate costs.

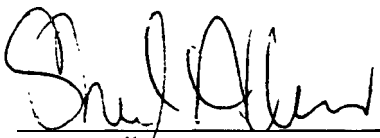
Dated at Madison, Wisconsin this 19 ~~th~~ day of October, 1999.



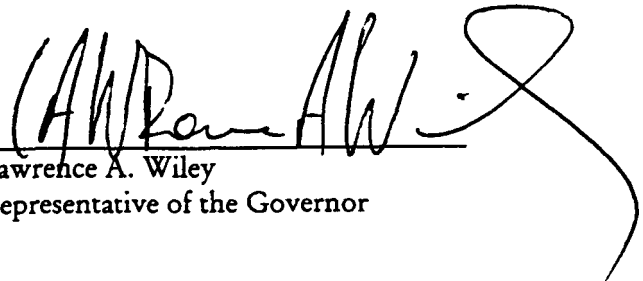
 Alan Lee, Chair
 Representative of the Attorney General



 Edward D. Main, Secretary
 Representative of the Secretary of Administration



 Sheryl Albers
 Assembly Finance Committee



 Lawrence A. Wiley
 Representative of the Governor

AN **ACT** relating to: expenditure of \$13,785.25 from moneys appropriated to the department of transportation in payment of a claim against the state made by the city of West Allis.

Insert Analysis

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

SECTION 1. **Claim against the state.** There is directed to be expended from the appropriation under section 20.395 (3) (cq) of the statutes, as affected by the acts of 1999, \$13,785.25 in payment of a claim against the state made by the city of West Allis as reimbursement for 80% of the real estate acquisition costs incurred by the city in the improvement of South 76th Street in 1993-94, which would have been paid with federal and state aid but for the failure of an employe of the department of transportation to obtain prior approval for federal financial participation in the improvement project. Acceptance of this payment releases this state and its officers, employes and agents **from** any further liability resulting from expenses incurred by the city in constructing this improvement project.

(END)

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4053/lins2
JTK.....

analysis

This bill directs expenditure of \$13,785.25 from moneys appropriated to the department of transportation (DOT) for the 1999-2001 fiscal biennium for improvement of existing state trunk highways and connecting highways and bridges, for construction and rehabilitation of interstate highways and for certain related programs in payment of a claim against DOT by the city of West Allis. In 1993-94, the city incurred real estate acquisition costs in connection with an improvement project for South 76th Street, 80% of which would have been eligible for federal financial participation if an application for approval of federal participation had been timely filed. The city relied upon DOT to file the application, but due to an oversight by a DOT employee, the application was not filed in a timely manner. On October 19, 1999, the claims board recommended payment of this claim (see *Senate Journal*, pp. 307-308). ✓

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



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-4053/2

JTK:kmg:jf

Wanted mon 1/3

Computer refused
to forward draft.
Computer refused
to run redraft mak

1999 BILL

1 **AN ACT relating to:** expenditure of \$13,785.25 from moneys appropriated to the
2 department of transportation in payment of a claim against the state made by
3 the city of West Allis.

Analysis by the Legislative Reference Bureau

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financial

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

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8 improvement project. Acceptance of this payment releases this state and its **officers,**
9 employes and agents from any further liability resulting from expenses incurred by
10 the city in constructing this improvement project.

11

(END)

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 01/03/2000

To: Representative Albers

Relating to LRB drafting number: LRB-4053

Topic

City of West Allis claim #1

Subject(s)

State Finance - claims agnst st

1. **JACKET** the draft for introduction SA

in the **Senate** or the **Assembly** X (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Jeffery T. Kuesel, Managing Attorney
Telephone: (608) 266-6778