

1999 DRAFTINGREQUEST

**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: **kuesej t**

May Contact:

Alt. Drafters:

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

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Walworth County claim

**Instructions:**

Per board recommendation, 10/19/99.

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Reauired</u>
I?	kuesejt 12/20/1999	gilfokm 12/21/1999		_____			State
/1			jfrantze 12/22/1999	_____	lrb-docadmin 1212211999		
/2	kuesej t 0 1/03/2000	gilfokm 0 1/03/2000	jfrantze 0 1/03/2000	_____	lrb-docadmin 0 1/03/2000	lrb-docadmin 0 1/07/2000	

FE Sent For:

<END>

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*Jb 1/3* *Jb 1/3*  
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I? I	kuesejt	rhw King 12/1	Sheryl		Sheryl			
					12/22			

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  
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.

9. Scott and Faith Fechtmeyer of Wind Lake, Wisconsin claim \$7,112.20 for overpayment of income taxes. The claimants sold their home in June 1997. \$20,950.80 of the proceeds from the sale was paid to the DOR to pay off unpaid tax assessments. The claimants state that they were not aware of the amount of these assessments until the time of the closing. They believe that the assessments were excessive and unfairly punitive. The claimants filed their outstanding tax returns in December 1997. After the sale of their home, the claimants received a \$2700 refund check from the DOR. They then received three refund checks in August 1998, each in the amount of \$3,573.49. The claimants state that no explanations accompanied these checks and that they assumed this money was being refunded to them because the DOR had taken out too much from the sale of their home. They cashed two of the checks and then received a letter from the DOR, which stated that two of the \$3,573.49 checks were sent in error and had to be returned. The claimants returned the one uncashed check and contacted the DOR. The claimants state that they told the DOR that they felt they were owed this money because of the excessive assessments. The claimants were told that their overpayments could not be refunded to them because they had filed the returns more than 2 years after the date of the assessments. The claimants request that the third check for \$3,573.49 be returned to them and also request payment of the remainder of their overpayment in the amount of \$3,538.71. The Department of Revenue recommends denial of this claim. This case involves chronic nonfilers who had failed to file timely income tax returns for the years 1991 through 1995. The assessments pertinent to this claim are those for 1991 and 1992. These assessments were issued in November 1994. In June 1997, the assessments were paid in full from the proceeds of the sale of the claimants' home. (The amount collected that went towards the 1991 and 1992 assessments was \$12,617.68.) The 1991 and 1992 returns were filed in December 1997, more than three years after the assessment date. Section 71.75 (5), Stats., prohibits the DOR from refunding the overpayment since no claim was made within the two-year time period. The two-year time limit did not apply to the 1993 income tax assessment and all monies collected on the 1993 estimate were properly applied to outstanding liabilities or refunded to the claimants. In fact, the DOR made an immense error and refunded the claimants three checks for \$3,573.49, when only one check should have been sent. The claimants have returned one of the extra checks but have refused to return the second, justifying their actions to reduce what they believe is an unfair loss. The DOR is currently taking action to recover the money refunded in error. 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 not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

10. Walworth County, Wisconsin claims \$76,150.00 for damages related to an error made by a DOT employe related to a county trunk highway improvement project. The project agreement split various costs of the project with the State and the Federal Highway Administration (FWHA) paying 80% and the county 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 county attempted to seek reimbursement from FWHA. FWHA has denied the county reimbursement because prior authorization was not received according to their policy. The county 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 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 Bamingham Foster Care  
Reuben Johnson & Son, Inc.  
Scott & Faith Fechmeyer

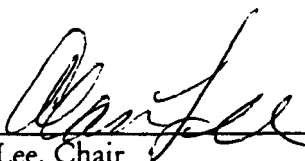
**2. Payment of the following amounts to the following claimants is justified under s. 16.007, Stats:**

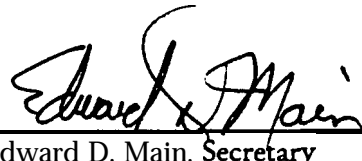
Julie Nickel \$251.62

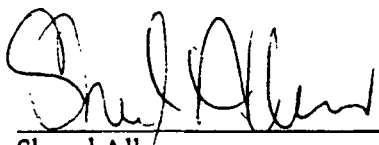
**The Board recommends:**

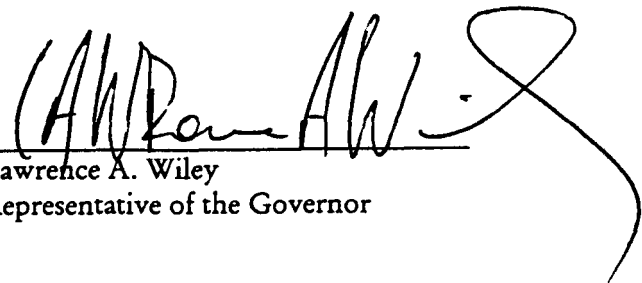
- 1. Payment of \$9,926.00 to Robert and Dorothy Messner for damages to their orchard.
- 2. Payment of \$13,785.25 to the City of West Allis, Wisconsin for real estate costs.
- 3. Payment of \$56,300.00 to the City of West Allis, Wisconsin for real estate costs.
- 4. Payment of \$76,150.00 to Walworth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

**Dated at Madison, Wisconsin this 19<sup>th</sup> 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~~ <sup>\$76,150</sup> from moneys appropriated to the department of transportation in payment of a claim against the state made by ~~the city of West Allis.~~ <sup>Walworth county</sup>

*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~~ <sup>\$76,150</sup> in payment of a claim against the state made by ~~the city of West Allis~~ <sup>Walworth County</sup> as reimbursement for 80% of the real estate acquisition costs incurred by ~~the city~~ <sup>Walworth County</sup> in the improvement of ~~South 76th Street in 1993-94~~ <sup>South 76th Street in 1993-94</sup>, 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)

CTH  
with "H" between Geneva City and  
Lake Geneva in 1994 = 1994



1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

-405571  
LRB-4053/ins2  
JTK.....

*analysis*

*\$ 76,300*

*Walworth County*

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 employe, 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~~). *P. 309*

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

*1994, the county*

*CTH  
"H" between Genoa  
City and Lake Geneva*





State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-4055/1 2  
JTK:kmg:jf

WANTED MON 1/3

1999 BILL

1 **AN ACT relating** to: expenditure of \$76,150 from moneys appropriated to the  
2 department of transportation in payment of a claim against the state made by  
3 Walworth County.

**Analysis by the Legislative Reference Bureau**

This bill directs expenditure of \$76,150 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 Walworth County. In 1994, the county incurred real estate acquisition costs in connection with an improvement project for CTH "H" between Genoa City and Lake Geneva, 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 employe, the application was not filed in a timely manner. On October 19, 1999, the claims board recommended payment of this claim (see *Senate Journal*, p. 309).

financial

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:**

and state

**BILL**

1           **SECTION 1. Claim against the state.** There is directed to be expended from the  
2 appropriation under section 20.395 (3) (cq) of the statutes, as affected by the acts of  
3 1999, \$76,150 in payment of a claim against the state made by Walworth County as  
4 reimbursement for 80% of the real estate acquisition costs incurred by the county in  
5 the improvement of CTH "H" between Genoa City and Lake Geneva in 1994, which  
6 would have been paid with federal and state aid but for the failure of an employe of  
7 the department of transportation to obtain prior approval for federal financial  
8 participation in the improvement project. Acceptance of this payment releases this  
9 state and its **officers**, employes and agents from any further liability resulting from  
10 expenses incurred by the ~~city~~ in constructing this improvement project.

11

*county* (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-4055

**Topic**

Walworth County claim

**Subject(s)**

State Finance - claims agnst st

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

in the **Senate** or the **Assembly**  (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