

2003 ASSEMBLY BILL 485

August 26, 2003 – Introduced by Representatives D. MEYER, PETROWSKI, SUDER, TURNER, MONTGOMERY, MUSSER, OTT, JESKEWITZ, ALBERS, SERATTI, HAHN and FRISKE, cosponsored by Senators WELCH, ZIEN and SCHULTZ, by request of Wisconsin Claims Board. Referred to Joint Committee on Finance.

- 1 **AN ACT relating to:** expenditure of \$17,568.12 from the general fund in payment
2 of a claim against the state made by Mullins Cheese, Inc.

Analysis by the Legislative Reference Bureau

This bill directs expenditure of \$17,568.12 from the general fund in payment of a claim against the state made by Mullins Cheese, Inc., against the Department of Agriculture, Trade and Consumer Protection (DATCP). On May 1, 2002, DATCP made an inspection of the claimant's plant to test its dairy products. The results of its tests were not immediately available, and the claimant transferred some of its whey cream that was affected by the tests to a dairy. DATCP then claimed that the test results at the claimant's plant indicated excessive antibiotic residue. The claimant also performed its own tests, which indicated that antibiotic residue was not excessive. At the claimant's request, the federal Food and Drug Administration also performed tests, and was able to identify the specific drug contained in the product and determine that the residue of that drug was not excessive. While the DATCP test results were pending, the dairy to which the claimant shipped whey cream mixed it with product from other sources. While the federal test results were pending, the claimant and the dairy destroyed some original and mixed products that were affected by the tests and the claimant reimbursed the dairy for its loss. DATCP asserts that it advised the claimant to hold and not intermingle any tested products until the final test results were received. The claimant claimed \$17,568.12, representing the total value of the whey cream that was destroyed as a result of DATCP's tests. On May 15, 2003, the Claims Board recommended that this claim be paid on the basis of equitable principles (see 2003 *Senate Journal*, pp. 188–189).

ASSEMBLY BILL 485

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 under section 20.505 (4) (d) of the statutes, as affected by the acts
3 of 2003, \$17,568.12 in payment of a claim against the state made by Mullins Cheese,
4 Inc., Mosinee, Wisconsin, to compensate it for the costs of destruction of whey cream
5 originating in its plant after the Department of Agriculture, Trade and Consumer
6 Protection performed tests on May 1, 2002, that indicated excessive antibiotic
7 residue in its milk. Acceptance of this payment releases this state and its officers,
8 employees, and agents from any further liability resulting from damages incurred
9 by the claimant as a result of state testing of its milk on this date.

10

(END)