



# STATE OF WISCONSIN

# Senate Journal

## Ninety–Seventh Regular Session

10:00 A.M.

TUESDAY, May 30, 2006

The Senate met.

The Senate was called to order by the Senate Chief Clerk pursuant to Senate Rule 5 (4)(b).

The Chair, with unanimous consent, asked that the proper entries be made in the Journal.

Barry Huebner	DATCP	\$46.26
Darnell Jackson	State Courts	\$195.00
Jeremy M. Wine	DOC	\$1,686.32
Landwehr Construction	DOA	\$73,562.70
Lisa R. Vadnais	DHFS	\$556.83

***The Board Finds:***

### CHIEF CLERK'S ENTRIES

The Chief Clerk makes the following entries dated Thursday, May 25, 2006.

#### State of Wisconsin Claims Board

May 25, 2006

The Honorable, The Senate:

Enclosed is the report of the State Claims Board covering the claims heard on May 5, 2006.

The amounts recommended for payment under \$5,000 on claims included in this report have, under the provisions of s. 16.007, stats., been paid directly by the Board.

The Board is preparing the bill(s) on the recommended award(s) over \$5,000, if any, and will submit such to the Joint Finance Committee for legislative introduction.

This report is for the information of the Legislature. The Board would appreciate your acceptance and spreading of it upon the Journal to inform the members of the Legislature.

Sincerely,

JOHN E. ROTHSCHILD

Secretary

#### STATE OF WISCONSIN CLAIMS BOARD

**The State Claims Board conducted hearings at the State Capitol Building in Madison, Wisconsin, on May 5, 2006 upon the following claims:**

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
Amanda Barbian	DOT	\$2,627.54
Charlotte B. Mahoney	DOR	\$817.99
United Mechanical, Inc.	DOA	\$139,961.56
Scott Fields	UW	\$5,000.00
Levi Aho	DOC	\$891.10
Chris A. Lund	DOC	\$1,346.80
Nathan McFarlane	DOC	\$8,439.44
Ryan Schneider	DOC	\$1,646.00

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

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
Canam Steel Corporation	DFI	\$921.86

**1. Amanda Barbian** of Madison, Wisconsin claims \$2,627.54 for cost incurred due to failure of the DOT to carry forward a salvage brand from a previous title. In April 2005, the claimant purchased a 1996 Toyota Corolla from a private party. At the time of purchase, the WI title indicated "previously titled in MN" with no other brands. The claimant states that she began noticing mechanical problems soon after the purchase. The claimant took the car to be checked by several mechanics, who uncovered that the vehicle needed brake repair, and was missing the engine mounts and both airbags. The claimant did further research on the vehicle and discovered that it had been branded as salvage in MN, but that the WI DOT had not carried forward that brand. The brake repair cost \$264.75 and a temporary fix for the engine mounts cost \$37.98. The claimant has received an estimate of \$2,324.81 to replace the airbags and permanently fix the engine mounts. She requests reimbursement of \$2,627.54 for the repair costs.

The DOT recommends payment of this claim in the reduced amount of \$1,650. The DOT admits that there was negligence on the part of a state employee, who failed to carry forward the salvage brand from the MN title. However, DOT points to the fact that it would not be unusual for a vehicle with 96,000 miles on it to need brake work, and DOT therefore does not feel that the claimant should be reimbursed for that repair. DOT states that salvage vehicles are usually valued at 50% of their purchase price, depending on the salvage brand. DOT therefore believes that, since the claimant intends to keep the vehicle, she should be reimbursed for 50% of her \$3,300 purchase price, \$1,650.

The Board concludes the claim should be paid in the reduced amount of \$2,362.79 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Transportation appropriation s. 20.395(5)(cq), Stats.

**2. Charlotte B. Mahoney** of Milwaukee, Wisconsin claims \$817.99 for refund of interest assessed on delinquent income tax assessments for tax years 1999 through 2001. The claimant is 95 years old. In 1999, she was injured in a home accident, which required hospitalization, surgery, and an extended period of rehabilitation in a nursing home. She also suffered several small strokes, which impaired her memory. Much of the mail and paperwork she received during this time was lost and/or misplaced. When the claimant's youngest son tried to get her paperwork together to do her taxes, he was unable to find all of the needed information and he began contacting the IRS to

obtain the missing pieces. The claimant's son also experienced personal hardship caused by the sudden and life-threatening illness of his own son in 2001. The claimant's son was finally able to complete the late federal and state returns in the spring of 2004. The claimant states that her taxes have always been filed in timely fashion and that there was no deliberate attempt to avoid paying her taxes. She states that it was only the extreme extenuating circumstances suffered by her family during her illness and that of her grandson, which caused the delay in filing these taxes. Due to those extenuating circumstances, she requests reimbursement of the interest charged.

The DOR does not recommend payment of this claim. The DOR has already refunded \$452.01, which represents late filing fees, collection fees and a reduction in interest from delinquent interest to regular interest. The DOR points to the fact that regular interest is not appealable under the law and the DOR therefore 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.

**3. United Mechanical, Inc.** of Racine, Wisconsin claims \$139,961.56 for additional contract costs allegedly incurred due to delays in a Regional Probation and Parole Facility project in Sturtevant Wisconsin. The claimant states that massive delays were caused by the unavailability of municipal sewer and water from the Village of Sturtevant via the DOA. The claimant states that work on the project was scheduled to commence on March 25, 2002, but that sewer and water was not available until August 12, 2003, almost a year and a half late. The claimant alleges that this long delay made timely completion of the project impossible, and forced the claimant to make major adjustments to its schedule, workforce and sequencing of work. The claimant states that it worked diligently to attempt to keep the project on schedule, by working around the lack of sewer and water, but that doing so caused significant additional expenses. The claimant believes that case law holds the state responsible for any inefficiencies created by the owners by the state's failure to ensure that sewer and water was provided on schedule. The claimant requests reimbursement for its additional costs.

The DOA recommends denial of this claim because DOA believes that it is without merit as against the state, and that the claimant has unduly inflated its additional costs, including costs in its claim that are completely unrelated to the sewer and water problem. The DOA does not deny that the law provides that the state is responsible for inefficiencies it causes. However, in this instance, the DOT denies that it caused the delays in the water and sewer connections. The Village of Sturtevant refused to allow sewer and water connections until the state paid what amounted to a permit fee under a local ordinance, a fee which the state refused to pay. The state fought a year long battle with the Village over these fees and the Village finally allowed the connections in May 2003. The DOA points to the fact that the Claims Board also denied the Village's September 2003 claim for payment of this fee. The DOA argues that the delays caused by the Village were simply unforeseen by both parties and that the state did not act fraudulently or unreasonably in dealing with the permit fee issue, but instead made every reasonable effort to persuade the Village to allow the hookups. The DOA also points to the fact that it made alternate arrangements to provide water and that there was no time during the field work that water was not available. Finally, the DOA points to the fact that many of the claimant's alleged damages deal with overall delays in the project, but are in no way related to the water/sewer issue as alleged. The DOA believes that the

Village of Sturtevant bears full responsibility for any alleged harm suffered by the claimant caused by the sewer and water connection delays and that the claimant should pursue their claim against the Village of Sturtevant.

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 Rothschild not participating.*)

**4. Scott Fields** of Koln, Germany claims \$5,000.00 for wages allegedly due for work performed by the claimant for a UW professor. The claimant states that he was hired by UW Professor Douglas Rosenberg in March 2003 for a series of multi-media performances. The claimant states that he scheduled bookings, made travel arrangements, and composed and performed music for the performances. The claimant states that at the time, he believed that he was working for Mr. Rosenberg. The claimant now believes that he was actually employed by the UW and points to the April 13, 2005, letter from UW Legal Counsel Ben Griffiths in support of that assertion. The claimant states that he was paid by Mr. Rosenberg for some of his services, but that Mr. Rosenberg failed to pay him for his administrative work scheduling the tour and making travel arrangements. The claimant now requests payment for 200 hours of administrative work at \$25 an hour, for a total claim of \$5000.

The UW recommends denial of this claim. The claimant filed a complaint against Mr. Rosenberg in Dane County Circuit Court. The UW states that Mr. Griffiths' April 13, 2005, letter takes responsibility for the claimant's alleged contract only because it was related to activities in the scope of Mr. Rosenberg's employment. The UW points to the decision of Court Commissioner Marjorie Schuett, who concluded that the claimant had not established that he was entitled to payment because there was no agreement that he would be paid for administrative services he allegedly provided. The court decision referenced a 3/13/04 email from the claimant to Mr. Rosenberg, in which the claimant stated "Our deal was that I would be compensated only for days spent gigging, rehearsing, and traveling. The time I have spent many hours booking and composing was for the collective good. I figured that was okay because there would be a substantial amount of work to come." The court also pointed to the fact that it was only after Mr. Rosenberg cancelled the project that the claimant sought payment for his administrative services. The court concluded that there was no agreement between the claimant and Mr. Rosenberg for payment for these services. The UW states that this claim has been adjudicated and dismissed on the merits, a decision which the claimant did not appeal.

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 would be willing to reconsider this claim if significant new or additional evidence becomes available in the future.

**5. Levi Aho** of Eau Claire, Wisconsin claims \$891.10 for damages allegedly related to the delay in the opening of Stanley Correctional Institution in 2002. This claim is one of a group of claims from employees who were offered jobs at Stanley Correctional. The prison was scheduled to open in the fall of 2002 and employees were given start dates in July and August of 2002. Many employees sold their homes, moved their families and left other jobs in anticipation of the new jobs at Stanley. The claimants allege that they received very late notice that the state was delaying opening of the prison until January 2003. As a result of this delay, many employees incurred

additional expenses relating to moving and commuting to their old jobs while waiting for Stanley to open. These claimants relied on the state's stated start dates for the new jobs and they do not believe that they should be held responsible for the additional expenses incurred because the state decided to delay the opening. Mr. Aho requests reimbursement for one month's rent and security deposit, U-Haul rental, storage unit rental for 2 months, and mileage of 50 miles per day for 20 days at \$0.36 per mile.

The DOC recommends denial of this claim. Mr. Aho sought a transfer from Kettle Moraine Correctional Institution to Stanley, which was to be effective July 15, 2002, however, the legislature delayed the opening of Stanley until January 2003. The DOC notified employees by phone and in writing as soon as the legislative action was known and prior to the assigned start dates. Mr. Aho eventually transferred to Stanley on September 9, 2002, and his employment with DOC was not interrupted by the delay in the transfer. The DOC believes that it is unclear from Mr. Aho's documentation to what extent the rent, U-Haul and storage unit expenses were incurred specifically because of the delay, and that these costs would not have been otherwise incurred. As for Mr. Aho's mileage claims, it is unclear whether this mileage figure is the difference between the distance he drove from his home to his old job and the distance he drove from his home to Stanley. Apparently he was driving to his old job at KMCI and continued to do so until the transfer to Stanley took place. Finally, the DOC states that the delay of the Stanley opening was an unforeseen action of the legislature and was completely out of the DOC's control. The DOC does not believe it should be held responsible for these expenses.

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. Chris A. Lund** of Eau Claire, Wisconsin claims \$1,346.80 for damages allegedly related to the delay in the opening of Stanley Correctional Institution in 2002. This claim is one of a group of claims from employees who were offered jobs at Stanley Correctional. The prison was scheduled to open in the fall of 2002 and employees were given start dates in July and August of 2002. Many employees sold their homes, moved their families and left other jobs in anticipation of the new jobs at Stanley. The claimants allege that they received very late notice that the state was delaying opening of the prison until January 2003. As a result of this delay, many employees incurred additional expenses relating to moving and commuting to their old jobs while waiting for Stanley to open. These claimants relied on the state's stated start dates for the new jobs and they do not believe that they should be held responsible for the additional expenses incurred because the state decided to delay the opening. Mr. Lund requests reimbursement for 3,640 miles @ \$0.37 per mile.

The DOC recommends denial of this claim. Mr. Lund sought a transfer from Jackson Correctional Institution to Stanley, which was to be effective July 15, 2002, however, the legislature delayed the opening of Stanley until January 2003. The DOC notified employees by phone and in writing as soon as the legislative action was known and prior to the assigned start dates. Mr. Lund eventually transferred to Stanley on November 17, 2002, and his employment with DOC was not interrupted by the delay in the transfer. Mr. Lund has not submitted any mileage or attendance records to support his mileage claim. The DOC believes that it is unclear whether this mileage figure is the difference between the distance he drove from his home to his old job and the distance he drove from his home to Stanley. Apparently he was driving to his old job at JCI and continued to

do so until the transfer to Stanley took place. Finally, the DOC states that the delay of the Stanley opening was an unforeseen action of the legislature and was completely out of the DOC's control. The DOC does not believe it should be held responsible for these expenses.

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. Nathan McFarlane** of Stanley, Wisconsin claims \$8,439.44 for damages allegedly related to the delay in the opening of Stanley Correctional Institution in 2002. This claim is one of a group of claims from employees who were offered jobs at Stanley Correctional. The prison was scheduled to open in the fall of 2002 and employees were given start dates in July and August of 2002. Many employees sold their homes, moved their families and left other jobs in anticipation of the new jobs at Stanley. The claimants allege that they received very late notice that the state was delaying opening of the prison until January 2003. As a result of this delay, many employees incurred additional expenses relating to moving and commuting to their old jobs while waiting for Stanley to open. These claimants relied on the state's stated start dates for the new jobs and they do not believe that they should be held responsible for the additional expenses incurred because the state decided to delay the opening. Mr. McFarlane requests reimbursement for four months of house payments and utilities for his (unoccupied) new home; 9 weeks of lost wages for his wife; and mileage of 90 miles per day for 80 days at \$0.36 per mile.

The DOC recommends denial of this claim. Mr. McFarlane sought a transfer from Dodge Correctional Institution to Stanley, which was to be effective July 15, 2002, however, the legislature delayed the opening of Stanley until January 2003. The DOC notified employees by phone and in writing as soon as the legislative action was known and prior to the assigned start dates. Mr. McFarlane eventually transferred to Stanley on December 15, 2002, and his employment with DOC was not interrupted by the delay in the transfer. The DOC does not contest that apparently Mr. McFarlane purchased a home in anticipation of the transfer, however, the DOC believes that it is unclear that this move would not have occurred when it did despite the delay. Mr. McFarlane has provided no documentation whatsoever to support his claim of lost wages for his spouse and the DOC believes that tax receipts or some other evidence is necessary before this portion of the claim should be considered. As for Mr. McFarlane's mileage claims, it is unclear whether this mileage figure is the difference between the distance he drove from his home to his old job and the distance he drove from his home to Stanley. Apparently he was driving to his old job at DCI and continued to do so until the transfer to Stanley took place. Finally, the DOC states that the delay of the Stanley opening was an unforeseen action of the legislature and was completely out of the DOC's control. The DOC does not believe it should be held responsible for these expenses.

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.

**8. Ryan Schneider** of Eau Claire, Wisconsin claims \$1,646.00 for damages allegedly related to the delay in the opening of Stanley Correctional Institution in 2002. This claim is one of a group of claims from employees who were offered jobs at Stanley Correctional. The prison was scheduled to open in the fall of 2002 and employees were given start dates in July and

August of 2002. Many employees sold their homes, moved their families and left other jobs in anticipation of the new jobs at Stanley. The claimants allege that they received very late notice that the state was delaying opening of the prison until January 2003. As a result of this delay, many employees incurred additional expenses relating to moving and commuting to their old jobs while waiting for Stanley to open. These claimants relied on the state's stated start dates for the new jobs and they do not believe that they should be held responsible for the additional expenses incurred because the state decided to delay the opening. Mr. Schneider requests reimbursement for two and one half months rent, his security deposit, and U-Haul rental and gas.

The DOC recommends denial of this claim. Mr. Schneider sought a transfer from Prairie du Chien Correctional Institution to Stanley, which was to be effective July 15, 2002, however, the legislature delayed the opening of Stanley until January 2003. The DOC notified employees by phone and in writing as soon as the legislative action was known and prior to the assigned start dates. Mr. Schneider eventually transferred to Stanley on October 6, 2002, and his employment with DOC was not interrupted by the delay in the transfer. The DOC does not contest that apparently Mr. Schneider rented an apartment in anticipation of the transfer, however, the DOC believes that it is unclear that this move would not have occurred when it did despite the delay. Finally, the DOC states that the delay of the Stanley opening was an unforeseen action of the legislature and was completely out of the DOC's control. The DOC does not believe it should be held responsible for these expenses.

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. Canam Steel Corporation** of Point of Rocks, Maryland claims \$921.86 for overpayment of a 2005 Foreign Corporation Annual Report fee. The claimant states that it filed its 2005 report using an online system but that a human error occurred when entering the data. The claimant states that one of the lines should have been entered as zero, but that the person filling out the form accidentally repeated the dollar amount from the line above, resulting in an inflated par value stock number. The claimant states that, because of this error, it paid a \$1230 fee, and that if the correct figure had been used, the fee would only have been \$308.14. The claimant requests reimbursement of this overpayment.

The DFI recommends denial of this claim because the Department has no means by which to verify the accuracy of any of the information provided by the claimant in either the original or the adjusted annual report. The claimant admits that its error was not in any way the fault of the DFI. The DFI also points to the Claims Board's long-standing history of denying claims of this nature. Finally, the DFI notes that, because of the manner in which the 2005 and 2006 annual report fees are calculated, if the Claims Board were to approve payment of this claim, the necessary recalculation of the claimants 2005 and 2006 fees would actually result in the claimant owing the state an additional \$744.

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. Barry Huebner** of Auburndale, Wisconsin claims \$46.26 for lost value of milk after claimant's dairy permit was degraded from Grade A to Grade B. The DATCP inspected the claimant's farm in June 2005 and shortly thereafter degraded the farm to

Grade B. The claimant appealed the degrade and the DATCP agreed to restore the Grade A permit because of procedural flaws in the original inspection. While the degrade was in effect, the claimant received \$46.26 less for his milk than he would have if there had been no degrade of his permit. The claimant requests reimbursement for this amount.

The DATCP has no objection to payment of this claim in the amount requested.

The Board concludes the claim should be paid in the amount of \$46.26 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Agriculture, Trade & Consumer Protection appropriation s. 20.115(1)(a), Stats.

**11. Darnell Jackson** of Boscobel, Wisconsin claims \$195.00 for allegedly improper collection of a court filing fee. The claimant filed a writ of habeas corpus and was instructed to pay the \$195 filing fee by the Court of Appeals. The claimant paid the filing fee, but alleges that such fees are unconstitutional because filing fees do not apply to habeas corpus proceedings pursuant to the Prison Litigation Reform Act of 1995 (PLRA). The claimant believes his rights were violated and requests reimbursement of the \$195 filing fee.

The Director of State Courts recommends denial of this claim. When the claimant filed his *pro se* petition for habeas corpus with the Court of Appeals, he asked for a waiver of the filing fee. Based on the information provided on his PLRA worksheet, the claimant was not considered a prisoner for PLRA purposes. The Clerk's office determined that the claimant had sufficient funds to pay the fee and sent him an invoice. The claimant objected to the fee, however, a court order found that the claimant did not qualify as indigent. The claimant then filed a petition for review with the Supreme Court. The claimant did not submit a filing fee with the petition and the Supreme Court informed him that the petition would be denied if he did not pay the fee. The claimant moved for a fee waiver and submitted new information indicating that he had no available money. He also argued that the PLRA did not apply to his habeas corpus petition and cited several cases. The Supreme Court waived the filing fee, but indicated in its response that filing fees were applicable to the claimant's habeas corpus petition and that the fee only was being waived because the claimant had shown he was indigent. The claimant now repeats the same contention—that the PLRA makes habeas corpus petitions exempt from filing fees—and cites federal cases in support of his assertion. However, Wisconsin's version of the PLRA is significantly different from the federal PLRA and the Wisconsin Supreme Court has suggested that federal cases are not controlling with respect to Wisconsin's PLRA. Finally, the Director of State Courts points to the fact that the filing fee was not charged because the claimant was a "prisoner" under the PLRA—in fact he did not fit that definition—but because he had sufficient assets to pay the fee. The imposition of the fee was approved by order of the Court of Appeals and the Director of State Courts does not believe that the Claims Board should overturn that decision.

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. Jeremy M. Wine** of Portage, Wisconsin claims \$1,686.32 for reimbursement of money taken by the DOC for restitution and reimbursement of legal and medical co-pay loans. The claimant states that the restitution was imposed as a penalty as a result of a conduct report that occurred when he was incarcerated in 1996. The claimant also incurred legal and medical co-pay loans during this period of incarceration. The claimant states that he was completely discharged in July 2002

and that any outstanding debts he owed for the restitution and the loans should have been completely discharged at that time as well. The claimant states that when he was incarcerated again at a later date, the DOC took money from his account to pay for the restitution and loans incurred during the prior incarceration. The claimant believes that the ordered restitution is a penalty and that it therefore constitutes double jeopardy to hold him responsible for that amount during a later incarceration. The claimant also cites ss. 301.325 and 301.328, Stats., as the exclusive means by which the DOC may collect legal loans from inmates. The claimant alleges that the DOC has not followed the procedures provided for in those sections and that his right to due process has been violated. The claimant requests reimbursement of the amount taken from his account for payment of the restitution and loans incurred during his prior incarceration.

The DOC recommends denial of this claim. The claimant argues that the restitution ordered during his previous incarceration is a penalty and that it constitutes double jeopardy to hold him responsible for that restitution during his current incarceration. The DOC points to the fact that double jeopardy prohibits the state from penalizing a person twice for the same offence. The DOC notes that the claimant is not being punished twice—he is only being asked to pay the restitution once and the fact that the restitution amount has been collected over two periods of incarceration does not double the original penalty. The claimant also argues that his due process rights have been violated, which the DOC denies. The DOC states that the claimant received due process during the original hearing on the conduct report for which the restitution was ordered. The claimant also argues that he should not be held responsible for legal and medical co-pay loans incurred during his prior incarceration. The DOC notes that as a condition of obtaining such loans, an inmate is required to sign repayment agreements. Nowhere in the loan policies or repayment agreement forms does it state that the loans will be forgiven upon discharge or that DOC is prohibited from collecting these debts during subsequent incarceration. Finally, the DOC disagrees with the claimant's allegation that ss. 301.325 and 301.328, Stats., are the exclusive remedy available to the DOC for collection of these debts. The DOC states that there is nothing in these statutory sections which indicate that these are intended to be the exclusive method of collection or that a prisoner should be immune from DOC's efforts to collect outstanding debts simply because he is discharged from prison before the debt is paid.

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. Landwehr Construction** of St. Cloud, Minnesota claims \$73,562.70 for costs related to removal of asbestos containing material (ACM). The claimant alleges that this work was not included in the contract for a UW–River Falls demolition project and requests additional payment for the ACM removal. The claimant contends that the material in question, floor tile and foundation black tar/felt both are considered Category I non–friable ACM. (Friable material will crumble when squeezed between the thumb and forefinger.) The claimant alleges that bid documents provided that the state would be responsible for removal of Class I or Class II ACM and that the bidder should only include a bid cost for removal of friable ACM and Category II non–friable ACM. Because of these provisions, the claimant believed that removal of the floor tile and tar/felt was the responsibility of the state and they did not include the cost of removing this ACM in their bid. Although the bid documents did also refer to a \$50,000 cash allowance

related to the ACM, the claimant states that the language of this section, which indicates that the allowance is “to balance the Owner’s desire to recycle concrete floor slabs”, led them to believe that the state would remove the ACM and that the \$50,000 allowance only related to the recycling of the material. The claimant believes that the specific provisions that indicate the state is responsible for removing the Category I non–friable ACM take precedence over the general requirement section regarding the \$50,000 allowance. Finally, the claimant notes that its additional cost for removing the ACM is not substantially higher than the difference between its bid and the next lowest bidder. Therefore, the claimant believes that the state would not suffer any substantial loss compared to the cost it would have incurred if the claimant had not been awarded the bid.

The DOA recommends denial of this claim. The DOA points to the fact that the bid contained a mandatory requirement that bidders include in their bids additional allowances of \$50,000 to cover the cost of optional asbestos abatement work and \$10,000 to cover the labor for the abatement. The allowance was to be returned to the contractor if the contractor chose to recycle the ACM. The DOA notes that for some reason, the claimant chose to include the \$10,000 allowance, but not the \$50,000 allowance, despite the fact that both were mandatory requirements. The claimant admits in its claim that it understood that the floor tile and tar/felt removal was outside the scope of the project—hence, the requirement of the additional allowances. The DOA also disagrees with the claimant’s assertion that the ACM in question was non–friable. In fact, the ACM only remains non–friable if the contractor does not recycle the concrete. If the contractor chose to recycle the material, which was optional, that process would render the ACM friable. In addition, DOA believes that the claimant has miscalculated the amount of its claim, which at most, should not have exceeded \$48,251.40 in eligible costs for the work in question. (An amount, the DOA notes, which would have been covered by the \$50,000 allowance.) Finally, the DOA understands that the bid documents, contract documents, plans and specifications that make up these types of construction projects can be diverse and complex and may sometimes cause confusion. However, the claimant is an experienced bidder and was put on notice, along with all the other bidders, that it would be held responsible for any errors in its bid. The claimant made the mistake of failing to provide for the full, mandatory \$60,000 allowance required by the bid and the state should not now be held responsible for the claimant’s 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 neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles. (*Member Rothschild not participating.*)

**14. Lisa R. Vadnais** of Chippewa Falls, Wisconsin claims \$556.83 for vehicle damage caused by a resident of Northern Wisconsin Center, where the claimant is employed. The claimant states that on October 26, 2005, a NWC client became agitated and began hitting the walls with his briefcase. He then went outside and struck the claimant’s vehicle with his briefcase, denting and scratching the trunk. The claimant states that her vehicle was only about a month old at the time. The claimant has insurance coverage with a \$250 deductible, however, she does not feel that she should have to file a claim with her insurer, because this would cause her rates to go up. The claimant states that the accident was in no way her fault and she does not believe she should have to bear the additional expense of increased insurance costs. She therefore requests payment of the entire cost to repair her vehicle.

The DHFS believes that the facts of this incident as stated by the claimant are accurate. However, the department believes that it is reasonable to expect the claimant to pursue a claim with her insurer. The DHFS therefore only recommends payment of the claimant's \$250 deductible.

The Board concludes the claim should be paid in the reduced amount of \$250.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Health and Family Services appropriation s. 20.435(2)(g), Stats.

**The Board concludes:**

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

- Charlotte B. Mahoney
- United Mechanical, Inc.
- Scott Fields
- Levi Aho
- Chris A. Lund
- Nathan McFarlane
- Ryan Schneider
- Canam Steel Corporation
- Darnell Jackson
- Landwehr Construction
- Jeremy M. Wine

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

Amanda Barbian	\$2,362.79	s. 20.395(5)(cq),
Stats.		
Barry Huebner	\$46.26	s. 20.115(1)(a),
Stats.		
Lisa R. Vadnais	\$250.00	s. 20.435(2)(g),
Stats.		

**Dated at Madison, Wisconsin this 24th day of May, 2006.**

- Alan Lee  
Chair, Representative of the Attorney General
- John E. Rothschild  
Secretary, Representative of the Secretary of Administration
- Amy Kasper  
Representative of the Governor
- Mary Lazich  
Senate Finance Committee
- Dan Meyer  
Assembly Finance Committee

The committee on **Labor and Election Process Reform** reports and recommends:

**Senate Clearinghouse Rule 06-015**

Relating to the 2006 edition of the Uniform Standards of Professional Appraisal Practice (USPAP).

No action taken.

THOMAS REYNOLDS  
Chairperson

The Chief Clerk makes the following entries dated Friday, May 26, 2006.

**State of Wisconsin  
Office of the Governor**

May 26, 2006

To the Honorable, the Senate:

The following bill(s), originating in the Senate, have been approved, signed and deposited in the office of the Secretary of State:

<u>Bill Number</u>	<u>Act Number</u>	<u>Date Approved</u>
Senate Bill 358	Act 450	May 25, 2006
Senate Bill 685	Act 453	May 25, 2006
Senate Bill 524	Act 457	May 25, 2006
Senate Bill 145	Act 462	May 25, 2006
Senate Bill 548	Act 464	May 25, 2006
Senate Bill 528	Act 466	May 26, 2006

Sincerely,  
JIM DOYLE  
Governor

**State of Wisconsin  
Office of the Secretary of State**

To the Honorable, the Senate:

<u>Bill Number</u>	<u>Act Number</u>	<u>Publication Date</u>
Senate Bill 318	Act 434	June 5, 2006
Senate Bill 409	Act 435	June 5, 2006
Senate Bill 526	Act 436	June 5, 2006
Senate Bill 629	Act 437	June 5, 2006
Senate Bill 99	Act 442	June 5, 2006
Senate Bill 123	Act 443	June 5, 2006
Senate Bill 226	Act 444	June 5, 2006
Senate Bill 286	Act 445	June 5, 2006
Senate Bill 499	Act 446	June 5, 2006
Senate Bill 575	Act 447	June 5, 2006
Senate Bill 606	Act 448	June 5, 2006
Senate Bill 650	Act 449	June 5, 2006

<u>Joint Resolution</u>	<u>Enrolled Number</u>	<u>Publication Date</u>
SJR 75	59	Not Published
SJR 76	60	Not Published
SJR 86	61	Not Published

Sincerely,  
DOUGLAS LA FOLLETTE  
Secretary of State

**State of Wisconsin  
Office of the Governor**

May 26, 2006

The Honorable, The Senate:

I am vetoing **Senate Bill 446**. The bill would limit the Secretary of the Department of Administration's authority to determine the date of inter-fund transfers, when none is specified, by requiring that the transfer take place during the fiscal year in which the law takes effect.

At best, this bill is unnecessary. The DOA Secretary's authority to determine the date of a transfer pertains only if a date is not otherwise specified. If the Legislature wants to specify a date, it can do so.

At worst, this bill would needlessly restrict the Secretary's obligation to manage the state's finances in a prudent manner.

Managing the finances of an enterprise with over \$25 billion in annual funding is inherently complex and not all circumstances can be anticipated. The flexibility granted the Secretary of Administration in determining fund transfers allows the DOA to adjust to changing circumstances.

As a practical matter, SB 446 may not be workable in the context of a biennial budget. Non-statutory provisions such as transfers could easily be effective the date of publication or the first year of the biennium. In executing a two-year budget, a transfer in the second year could be the better option to comply with legislative intent for a balanced budget.

Sincerely,  
JIM DOYLE  
Governor

**State of Wisconsin  
Office of the Governor**

May 26, 2006

The Honorable, The Senate:

I am vetoing **Senate Bill 551**. The bill creates an exemption from current law to allow for one particular construction project in Kewaunee County to move forward even though it does not comply with the wetland laws that all other citizens of our state are expected to follow.

This bill undermines Wisconsin's natural resource laws to protect one particular building built on a wetland. Our natural heritage, so critical in generating tourism and jobs, should be managed in the best interests of all Wisconsin residents. We can't have a system where the Legislature is deciding who gets building permits and who doesn't.

A better use of the Legislature's time would be to focus on improving the process so that miscommunications over whether a project is acceptable won't happen in the future. My administration has already launched the most sweeping regulatory reform in the Midwest, so I am more than willing to work with legislators in both parties to improve the process further. Changing the rules so that one person gets special treatment and putting the Legislature in charge of building permits isn't something I can agree to, however.

My administration is committed to encouraging responsible growth and development throughout Wisconsin and those efforts are undermined when the Legislature, on a case-by-case basis, decides when our environmental protection laws should be enforced.

Sincerely,  
JIM DOYLE  
Governor

**State of Wisconsin  
Office of the Governor**

May 23, 2006

The Honorable, The Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint CLIFFORD, LINDA, of Madison, as a member of the Wisconsin Historical Society Board of Curators, to serve for the term ending July 1, 2009.

Sincerely,  
JIM DOYLE  
Governor

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

**State of Wisconsin  
Office of the Governor**

May 25, 2006

The Honorable, The Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint GRAHAM, ALFONSO, of Brookfield, as Chairman of the Parole Commission, to serve for the term ending March 1, 2007.

Sincerely,  
JIM DOYLE  
Governor

Read and referred to committee on **Judiciary, Corrections and Privacy**.

**State of Wisconsin  
Office of the Governor**

May 24, 2006

The Honorable, The Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint HANSON, GAIL, of Delafield, as a member of the Deferred Compensation Board, to serve for the term ending July 1, 2010.

Sincerely,  
JIM DOYLE  
Governor

Read and referred to committee on **Housing and Financial Institutions**.

**State of Wisconsin  
Office of the Governor**

May 25, 2006

The Honorable, The Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint JOHNSON, DIANE, of Hazelhurst, as a member of the Dietitians Affiliated Credentialing Board, to serve for the term ending July 1, 2010.

Sincerely,  
JIM DOYLE  
Governor

Read and referred to committee on **Health, Children, Families, Aging and Long Term Care**.

**State of Wisconsin  
Office of the Governor**

May 25, 2006

The Honorable, The Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint REDHAIL, GENE, of Green Bay, as a member of the Council on Domestic Abuse, to serve for the term ending July 1, 2009.

Sincerely,  
JIM DOYLE  
Governor

Read and referred to committee on **Health, Children, Families, Aging and Long Term Care**.

State of Wisconsin  
Office of the Governor

May 23, 2006

The Honorable, The Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint VANDER LOOP, BILL, of Kaukauna, as a member of the Wisconsin Judicial Commission, to serve for the term ending August 1, 2009.

Sincerely,

JIM DOYLE  
Governor

Read and referred to committee on **Judiciary, Corrections and Privacy.**

**PETITIONS AND COMMUNICATIONS**

State of Wisconsin  
Office of the Governor

May 30, 2006

To the Honorable, the Senate:

The following bill(s), originating in the Senate, have been approved, signed and deposited in the office of the Secretary of State:

<u>Bill Number</u>	<u>Act Number</u>	<u>Date Approved</u>
Senate Bill 613	Act 468	May 29, 2006
Senate Bill 696	Act 469	May 29, 2006
Senate Bill 436	Act 470	May 29, 2006
Senate Bill 590	Act 471	May 29, 2006
Senate Bill 406	Act 475	May 30, 2006
Senate Bill 619	Act 476	May 30, 2006
Senate Bill 681	Act 477	May 30, 2006
Senate Bill 661	Act 478	May 30, 2006
Senate Bill 680	Act 484	May 30, 2006
Senate Bill 186	Act 486	May 30, 2006
Senate Bill 136	Act 487	May 30, 2006

Sincerely,  
JIM DOYLE  
Governor

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

**Senate Clearinghouse Rule 06-014**

Relating to educational programs for auctioneers.  
Submitted by Department of Regulation and Licensing.  
Report received from Agency, May 26, 2006.

Referred to committee on **Labor and Election Process Reform**, May 30, 2006.

**Senate Clearinghouse Rule 06-041**

Relating to habitual traffic offenders.  
Submitted by Department of Transportation.  
Report received from Agency, May 26, 2006.

Referred to committee on **Natural Resources and Transportation**, May 30, 2006.

The committee on **Housing and Financial Institutions** reports and recommends:

**Senate Clearinghouse Rule 05-049**

Relating to stop work, stop use and petition for variance procedures and affecting small businesses.

No action taken.

CATHY STEPP  
Chairperson

**ADJOURNMENT**

The Chair, with unanimous consent, asked that the Senate adjourn until Wednesday, May 31, 2006.

Adjourned.

10:01 A.M.