

STATE OF WISCONSIN
Senate Journal
Ninety–Ninth Regular Session

TUESDAY, June 1, 2010

The Chief Clerk makes the following entries under the above date.

CHIEF CLERK’S ENTRIES

The Chief Clerk makes the following entries dated **Friday, May 28, 2010**.

**State of Wisconsin
Office of the Governor**

May 24, 2010

The Honorable, The Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint LANDRY, GREGORY, of Madison, as a member of the Athletic Trainers Affiliated Credentialing Board, to serve for the term ending July 1, 2012.

Respectfully Submitted,
JIM DOYLE
Governor

Read and referred to committee on **Health, Health Insurance, Privacy, Property Tax Relief, and Revenue**.

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

The committee on **Education** reports and recommends:

Senate Clearinghouse Rule 09–117

Relating to waiver of school hours.

No action taken.

JOHN LEHMAN
Chairperson

The committee on **Transportation, Tourism, Forestry, and Natural Resources** reports and recommends:

Senate Clearinghouse Rule 10–030

Relating to motor vehicle convenience fees.

No action taken.

JIM HOLPERIN
Chairperson

PETITIONS AND COMMUNICATIONS

**State of Wisconsin
Legislative Reference Bureau**

June 1, 2010

To the Honorable, the Legislature:

The following rules have been published in the May 31, 2010 Wisconsin Administrative Register No.653:

<u>Clearinghouse Rules</u>	<u>Effective Date(s)</u>
08–068	6–1–2010
09–024	6–1–2010
09–047	6–1–2010
09–048	6–1–2010
09–053	6–1–2010
09–057	6–1–2010
09–061	6–1–2010
09–063	6–1–2010
09–068	6–1–2010
09–074	6–1–2010
09–076	6–1–2010
09–082	6–1–2010
09–088	6–1–2010
09–090	6–1–2010
09–093	6–1–2010
09–095	6–1–2010
09–098	6–1–2010
09–100	6–1–2010
09–101	6–1–2010
09–103	6–1–2010
09–106	6–1–2010
09–109	6–1–2010
09–111	6–1–2010
09–113	6–1–2010
09–115	6–1–2010
09–116	6–1–2010
09–117	6–1–2010
10–003	6–1–2010

Sincerely,
BRUCE J. HOESLY
Senior Legislative Attorney/Code Editor

**State of Wisconsin
Office of the Governor**

May 27, 2010

The Honorable, The Legislature:

As required by Article V, Section 6 of the Wisconsin Constitution, I am submitting the annual Executive Clemency Report to the Legislature, covering those clemency cases upon which final dispositions were rendered for applicants during the 2009 calendar year. Below are the fifty–one applicants who received a full pardon in 2009:

Mark Ball (date of birth October 29, 1963), convicted on June 26, 1984, of two counts of Delivery of a Controlled Substance, was sentenced to eighteen months in prison (each count served concurrently) and two years of probation (each count served concurrently). The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 6-0. Following the Board's recommendation, Mr. Ball was granted a pardon on March 25, 2009, based on the length of time since the offense and the recommendations from both the Judge and District Attorney.

James Clark (date of birth May 10, 1949), convicted on or about November 28, 1969, of Possessing and Selling Marijuana, was sentenced to three years in Wisconsin State Reformatory (stayed) and three years of probation. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 6-0. Following the Board's recommendation, Mr. Clark was granted a pardon on March 25, 2009, based on the non-violent nature of the crime, lack of other criminal justice system contact, the length of time since the offense, and demonstrated public service.

Cheryl Schiltz (date of birth October 14, 1968), convicted on April 24, 1996, of Possession with Intent to Manufacture Controlled Substance, was sentenced to three years of probation, six months license suspension, and to pay a fine. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 6-0. Following the Board's recommendation, Ms. Schiltz was granted a pardon on March 25, 2009, based on Ms. Schiltz's extensive personal growth and development, significant community achievements, lack of other criminal justice system contact, the non-violent nature of the offense, and strong recommendations, including the support of the District Attorney.

Jerry Hardy (date of birth July 20, 1945), convicted on March 18, 1977, of Delivery of Amphetamine, was sentenced to six months in jail. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 6-0. Following the Board's recommendation, Mr. Hardy was granted a pardon on March 25, 2009, based on lack of other criminal justice system contact, a lack of a previous record, the non-violent nature of the crime, and the length of time since the offense.

Anthony Kurth (date of birth April 19, 1970), convicted on May 15, 1992, of Delivery of Marijuana, was sentenced to two years of probation, to pay restitution, and to pay a fine. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 6-0. Following the Board's recommendation, Mr. Kurth was granted a pardon on March 25, 2009, based on his positive adjustment, length of time since the offense, valid job concerns, extensive personal growth and development, and community achievements.

Magnolia Turbidy (date of birth December 7, 1979), convicted on or about October 4, 2000, of Delivery of LSD, was sentenced to 120 days in a county jail and to pay restitution. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 6-0. Following the Board's recommendation, Ms. Turbidy was granted a pardon on March 25, 2009, based on her positive adjustment, extensive personal growth & development, commitment to public service, significant community achievements, and strong recommendations, including that of the Judge.

Lisa Hawthorne (date of birth December 29, 1968), convicted on March 11, 1996, of Operating a Vehicle Without Owner's Consent, was sentenced to three years of probation (one year for unpaid restitution). The Governor's Pardon

Advisory Board recommended granting a pardon by a vote of 6-0. Following the Board's recommendation, Ms. Hawthorne was granted a pardon on March 25, 2009, based on lack of other criminal justice system contact, the non-violent nature of the crime, and length of time since the offense.

Misty Peterson (date of birth December 7, 1970), convicted on September 14, 1995, of Theft of Movable Property (PTAC) and Burglary of a Building or Dwelling (PTAC), was sentenced to six months in jail, five years of probation, and to pay restitution. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 6-0. Following the Board's recommendation, Ms. Peterson was granted a pardon on March 25, 2009, based on her positive adjustment, lack of other criminal justice system contact, and documented need.

Gwendolyn Triggs (date of birth September 3, 1964), convicted on August 12, 1993, of Failure to Report Income and Food Stamp Fraud, was sentenced to three years in prison, ten years of probation, and five years of probation (served concurrent to count one). The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 6-0. Following the Board's recommendation, Ms. Triggs was granted a pardon on March 25, 2009, based on her positive adjustment, lack of other criminal justice system contact, the non-violent nature of the crime, length of time since the offense, a lack of a previous record, valid job concerns, and significant community achievements.

Bonita Perry (date of birth June 23, 1963), convicted on January 24, 1992, of Failure to Report Receipt of Income and Food Stamp Fraud, was sentenced to six months in a House of Corrections, five years of probation, and to pay restitution. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 6-0. Following the Board's recommendation, Ms. Perry was granted a pardon on March 25, 2009, based on a lack of other criminal justice system contact, the non-violent nature of the crime, length of time since the offense, and a lack of a previous record.

Adrena Brooks (date of birth October 10, 1964), convicted on February 6, 1990, of Welfare Fraud, was sentenced to thirty months of probation, to pay a fine, and to pay restitution. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 6-0. Following the Board's recommendation, Ms. Brooks was granted a pardon on March 25, 2009, based on her positive adjustment, lack of other criminal justice system contact, the non-violent nature of the crime, the length of time since the offense, and valid job concerns.

Shandell Samara (date of birth July 4, 1972), convicted on March 12, 1998, of Theft of Movable Property Without Consent, was sentenced to ninety days in a county jail, thirty months of probation, and to pay restitution. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 6-0. Following the Board's recommendation, Ms. Samara was granted a pardon on March 25, 2009, based on her positive adjustment, lack of other criminal justice system contact, valid job concerns, substantial need, and extensive personal growth and development.

Richard Leciejewski (date of birth May 27, 1948), convicted on February 23, 1966, of Illegal Entry with Intent to Steal Property, was sentenced to two years of probation and to pay restitution. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 6-0. Following the Board's recommendation, Mr. Leciejewski was granted a pardon on March 25, 2009, based on the non-violent nature of

the crime, length of time since the offense, and recommendations from both the District Attorney and Judge.

Jerry Norphlet–Brantley (date of birth June 16, 1948), convicted on July 6, 1990, of Welfare Fraud and False Swearing, was sentenced to four years in prison, nine months in a county jail, three years of probation, and to pay a fine. The Governor’s Pardon Advisory Board recommended granting a pardon by a vote of 5–1. Following the Board’s recommendation, Ms. Brantley was granted a pardon on March 25, 2009, based on a lack of prior and subsequent criminal justice system contacts, the non–violent nature of the offense, and the length of time since conviction.

Oralia Godina (date of birth September 1, 1940), convicted on April 11, 1973, of Injury by Conduct Regardless of Life, was sentenced to one year in jail. The Governor’s Pardon Advisory Board recommended granting a pardon by a vote of 5–1. Following the Board’s recommendation, Ms. Godina was granted a pardon on March 25, 2009, based on her positive adjustment, extensive personal growth and development, and documented need.

Ruby McCuiston (date of birth December 16, 1969), convicted on November 15, 1990, of Homicide by Negligent Handling of a Dangerous Weapon, was sentenced to five years in prison and five years of probation. The Governor’s Pardon Advisory Board was split by a vote of 3–3. Ms. McCuiston was granted a pardon on March 25, 2009, based on the underlying circumstances of the crime, her positive adjustment, a lack of other prior or subsequent criminal justice system contact, and the length of time since the offense.

Chad Herwald (date of birth January 4, 1970), convicted on September 25, 1992, of Delivery of THC, was sentenced to three months in jail with Huber privileges, three months of house arrest, three years of probation, and to pay a fine. The Governor’s Pardon Advisory Board was split by a vote of 3–3. Mr. Herwald was granted a pardon on March 25, 2009, based on his positive adjustment, extensive personal growth and development, and a lack of other criminal justice system contact.

Gregory Pryor (date of birth August 9, 1965), convicted on February 11, 1986, of Endangering Safety or Life, was sentenced to ninety days in jail, three years of probation, to pay restitution and a fine, and 200 hours of community service. The Governor’s Pardon Advisory Board was split by a vote of 3–3. Mr. Pryor was granted a pardon on March 25, 2009, based on his acceptance of responsibility, extensive personal growth, documented need, a lack of subsequent criminal justice system contact, and strong support from members of his community.

Robert Diamond (date of birth February 1, 1954), convicted on October 8, 1981, of Delivery of Cocaine and convicted on February 18, 1985, of Possession of a Controlled Substance with Intent to Deliver, was sentenced to eighteen months in prison, seven years of probation, and to pay restitution. The Governor’s Pardon Advisory Board was split by a vote of 3–3. Mr. Diamond was granted a pardon on March 25, 2009, based on his positive adjustment, extensive personal growth and development, and the length of time since the offense.

Manuel Renteria (date of birth May 19, 1980), convicted on April 21, 1999, of Conspiracy to Deliver THC, was sentenced to 18 months of probation. The Governor’s Pardon Advisory Board recommended granting a pardon by a vote of 6–0. Following the Board’s recommendation, Mr. Renteria was granted a pardon on July 8, 2009, based on Mr. Renteria’s

positive adjustment, a lack of other criminal justice system contact, the non–violent nature of the crime, and valid job concerns.

Gary Gyr (date of birth November 23, 1953), convicted on July 23, 1986, of Delivery of Controlled Substance (THC), was sentenced to two weeks in jail and two years of probation. The Governor’s Pardon Advisory Board recommended granting a pardon by a vote of 6–0. Following the Board’s recommendation, Mr. Gyr was granted a pardon on July 8, 2009, based on his positive adjustment, a lack of other criminal justice system contact, the non–violent nature of the crime, the length of time since the offense, Mr. Gyr’s extensive personal growth and development, and recommendations from the District Attorney and Judge.

Sandra Austin (date of birth April 9, 1961), convicted on August 15, 1995, of Failure to Report Receipt of Income, was sentenced to two years of probation and to pay restitution. The Governor’s Pardon Advisory Board recommended granting a pardon by a vote of 6–0. Following the Board’s recommendation, Ms. Austin was granted a pardon on July 8, 2009, based on her positive adjustment, a lack of other criminal justice system contact, the non–violent nature of the crime, and her extensive personal growth and development.

Dyan Talakowski (date of birth April 27, 1962), convicted on February 27, 1995, of Forgery–Uttering–PTAC and Conspiracy to Utter a Forged Check, was sentenced to five years of probation for each count (served concurrently). The Governor’s Pardon Advisory Board recommended granting a pardon by a vote of 6–0. Following the Board’s recommendation, Ms. Talakowski was granted a pardon on July 8, 2009, based on a lack of criminal justice system contact, the District Attorney’s recommendation, and Ms. Talakowski’s full payment of restitution.

Nardeo Sham (date of birth March 19, 1949), convicted on August 29, 1969, of two counts of Theft of Property, was sentenced to three years of probation. The Governor’s Pardon Advisory Board recommended granting a pardon by a vote of 6–0. Following the Board’s recommendation, Mr. Sham was granted a pardon on July 8, 2009, based on a lack of prior or subsequent criminal justice system contact, the length of time since the offense, and documented need.

Carey Malom (date of birth May 12, 1969), convicted on August 8, 1990, of Party to a Crime of Attempted Burglary, was sentenced to five days in county jail and five years of probation. The Governor’s Pardon Advisory Board recommended granting a pardon by a vote of 6–0. Following the Board’s recommendation, Mr. Malom was granted a pardon on July 8, 2009, based on his positive adjustment, a lack of prior or subsequent criminal justice system contact, the length of time since the offense, extensive growth and development, and community achievements.

Andretta Smith (date of birth July 16, 1968), convicted on September 16, 1996, of Failure to Report Receipt of Income and Food Stamp Fraud, was sentenced to two years in prison for each count (served concurrent), four years of probation for each count (served concurrent), and to pay restitution. The Governor’s Pardon Advisory Board recommended granting a pardon by a vote of 5–1. Following the Board’s recommendation, Ms. Smith was granted a pardon on July 8, 2009, based on her positive adjustment, extensive personal growth and development through continuing her education, documented need, and the non–violent nature of the crime.

Willie Hughes (date of birth August 24, 1971), convicted on July 21, 1992, of two counts of Delivery of Cocaine as Party

to Crime within 1,000 Feet of a School, was sentenced to an indeterminate term not to exceed five years for each count (each count served concurrent), and to pay restitution. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 5-1. Following the Board's recommendation, Mr. Hughes was granted a pardon on July 8, 2009, based on the length of time since the offense, a lack of recent criminal felony contacts, and valid job concerns.

Robert Schalinske (date of birth October 4, 1977), convicted on March 17, 1997, of Delivery of Psilocybin (Mushrooms), was sentenced to two years of probation and to pay a fine. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 5-1. Following the Board's recommendation, Mr. Schalinske was granted a pardon on July 8, 2009, based on Mr. Schalinske's positive adjustment, a lack of prior or subsequent criminal justice system contact, his community service, the non-violent nature of the crime, and Mr. Schalinske's honesty and forthrightness.

William Umbarger, Jr. (date of birth December 27, 1958), convicted on November 30, 1981, of Burglary, was sentenced to two years of probation and fifty hours of community service. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 5-1. Following the Board's recommendation, Mr. Umbarger was granted a pardon on July 8, 2009, based on a lack of other criminal justice system contact, documented need, and the length of time since the crime.

Warren Curry (date of birth December 3, 1974), convicted on February 23, 1998, of Possession with Intent to Deliver Controlled Substance - Cocaine, was sentenced to forty-two months in prison and six months of license suspension; convicted on February 12, 1998, of Possession of a Controlled Substance - Marijuana (misdemeanor), was sentenced to fifteen days in jail and six months of license suspension. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 4-2. Following the Board's recommendation, Mr. Curry was granted a pardon on July 8, 2009, based on his positive adjustment, extensive personal growth and development, the recommendation of various members of his community, and his community achievements.

Latonya Brown (date of birth January 13, 1973), convicted on September 28, 1999, of two counts of 2nd-Degree Recklessly Endangering Safety, was sentenced to two years in prison (each count served concurrently) and two years of probation (each count served concurrently). The Governor's Pardon Advisory Board was split by a vote of 3-3. Ms. Brown was granted a pardon on July 8, 2009, based on significant personal growth and development, a lack of prior and subsequent criminal justice system contact, valid job concerns, and a low risk of reoffending.

Larry Hjelmberg (date of birth March 6, 1960), convicted on March 1, 1982, of Burglary, PTAC, was sentenced to two years of probation. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 6-0. Following the Board's recommendation, Mr. Hjelmberg was granted a pardon on November 25, 2009, based on his positive adjustment, a lack of previous and subsequent criminal justice system contact, the non-violent nature of the crime, community achievements, and length of time since the offense.

David Evans (date of birth November 2, 1959), was convicted on July 6, 1978, of Contributing to the Delinquency of a Minor and sentenced to pay a fine; convicted on October 17, 1977, of Illegally Possessing Marijuana and sentenced to one year of probation; and convicted on January 15, 1979, of

Contributing to the Delinquency of a Minor and Possession of Marijuana and sentenced to pay a fine. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 6-0. Following the Board's recommendation, Mr. Evans was granted a pardon on November 25, 2009, based on his positive adjustment, extensive growth and development, a lack of subsequent criminal justice system contact, valid job concerns, documented need, length of time since the offense, and recommendations from both the District Attorney and Judge.

Eve Silverstein (date of birth May 4, 1961), convicted on September 16, 1980, of Armed and Masked Robbery (PTAC) and Concealing Identity, was sentenced to two years at Taycheedah Correctional Institution. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 6-0. Following the Board's recommendation, Ms. Silverstein was granted a pardon on November 25, 2009, based on her positive adjustment, extensive personal growth and development by furthering her education, a lack of subsequent criminal justice system contact, the length of time since the offense, community achievements, and the recommendation from the Judge.

Dorothy Sheppard (date of birth May 13, 1979), convicted on March 29, 2001, of Forgery - Writings or Objects (PTAC), was sentenced to two years of probation and to pay restitution. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 6-0. Following the Board's recommendation, Ms. Sheppard was granted a pardon on November 25, 2009, based on her positive adjustment, extensive personal growth, a lack of previous and subsequent criminal justice system contact, the non-violent nature of the crime, and a low risk of reoffending.

Karen Potnek (date of birth November 17, 1969), convicted on May 28, 1993, of Theft by Fraud, and sentenced to twenty-four months of probation. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 6-0. Following the Board's recommendation, Ms. Potnek was granted a pardon on November 25, 2009, based on her positive adjustment, extensive personal growth and development by furthering her education, the support from members of her community, a lack of prior and subsequent criminal justice system contacts, non-violent nature of the crime, and a low risk of reoffending.

Jeffrey C. Miller (date of birth August 16, 1969), convicted on November 1, 1993, of Escape from Custody, was sentenced to two years in prison (to be served consecutive to other terms) and to pay restitution. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 6-0. Following the Board's recommendation, Mr. Miller was granted a pardon on November 25, 2009, based on his positive adjustment, the non-violent nature of the crime, the length of time since the offense, a low risk of reoffending, his young age at the time of conviction, his honesty with the Board, and the recommendation of the Judge.

Janet Ritchey (date of birth December 28, 1963), convicted on September 12, 1991, of Delivery of Cocaine, was sentenced to three years of probation and to pay restitution. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 6-0. Following the Board's recommendation, Ms. Ritchey was granted a pardon on November 25, 2009, based on her positive adjustment, community achievements, and the recommendations of both the District attorney and Judge.

Charles Hoerter (date of birth November 18, 1955), convicted on February 27, 1974, of Burglary, was sentenced to

sixty days in jail with Huber (withheld), three years of probation, and to pay restitution. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 6–0. Following the Board's recommendation, Mr. Hoerter was granted a pardon on November 25, 2009, based on his positive adjustment, the length of time since the offense, his young age at the time of conviction, a lack of prior or subsequent criminal justice system contact, and his community involvement.

Andrew Degnan (date of birth May 23, 1965), convicted on January 23, 1995, Aggravated Battery, was sentenced to three years of probation. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 6–0. Following the Board's recommendation, Mr. Degnan was granted a pardon on November 25, 2009, based on his positive adjustment, a lack of prior and subsequent criminal justice system contact, valid job concerns, and recommendations from various members of his community and the Judge.

Michele Mattie (date of birth January 22, 1959), convicted on February 25, 1993, of Theft in a Business Setting, was sentenced to two years of probation, alcohol and drug treatment, and to pay restitution. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 6–0. Following the Board's recommendation, Ms. Mattie was granted a pardon on November 25, 2009, based on her positive adjustment, personal growth and development, a lack of previous and subsequent criminal justice system contact, the length of time since the offense, and valid job concerns.

Brenda Pearson (date of birth April 5, 1961), convicted on June 6, 1996, of Possession of a Controlled Substance, second/subsequent offense, was sentenced to sixty days in the house of corrections (stayed) and two years of probation. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 6–0. Following the Board's recommendation, Ms. Pearson was granted a pardon on November 25, 2009, based on her positive adjustment, extensive personal growth and development, the non-violent nature of the crime, and valid job concerns.

Richard Kurtz (date of birth October 20, 1965), convicted on April 2, 1984, of two counts of Burglary (PTAC), was sentenced to three years of probation and to pay restitution. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 6–0. Following the Board's recommendation, Mr. Kurtz was granted a pardon on November 25, 2009, based on his positive adjustment, a lack of prior and subsequent criminal justice system contact, the length of time since the offense, his young age at time of crime, and a low risk of reoffending.

Dawn Cureton (date of birth June 5, 1968), convicted on October 25, 1990, of Failure to Report Receipt of Income, was sentenced to four years of probation and to pay restitution. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 4–0. Following the Board's recommendation, Ms. Cureton was granted a pardon on November 25, 2009, based on her positive adjustment, extensive personal growth and development, a lack of prior and subsequent criminal justice system contact, the non-violent nature of the crime, the length of time since the offense, and community achievement.

Mark Braun (date of birth April 1, 1976), convicted on August 22, 1994, of Delivery of THC, was sentenced to forty-five days in jail (with work release) and three years of

probation. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 4–0. Following the Board's recommendation, Mr. Braun was granted a pardon on November 25, 2009, based on his positive adjustment, the length of time since the offense, valid job concerns, and his young age at the time of conviction.

John Nunemaker (date of birth February 19, 1943), convicted on July 31, 1965, of Abandonment, was sentenced to two years of probation. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 4–0. Following the Board's recommendation, Mr. Nunemaker was granted a pardon on November 25, 2009, based on a lack of subsequent criminal justice system contact, the length of time since the offense, a low risk of reoffending, documented need, and the recommendation from the District Attorney.

Alfred Poston (date of birth July 9, 1957), convicted on April 23, 1976, of Armed Robbery (PTAC), was sentenced to six years in the state reformatory. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 4–0. Following the Board's recommendation, Mr. Poston was granted a pardon on November 25, 2009, based on his positive adjustment, the length of time since the offense, extensive personal growth, and his foster care work.

Donna Gray (date of birth August 15, 1963), convicted on October 19, 1990, of Failure to Report Receipt of Income and Food Stamp Fraud, was sentenced to five years of probation and to pay restitution. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 4–0. Following the Board's recommendation, Ms. Gray was granted a pardon on November 25, 2009, based on her positive adjustment, her extensive personal growth and development through her continued education, the difficult circumstances surrounding the crime, a lack of prior and subsequent criminal justice system contact, the length of time since the offense, and a low risk of reoffending.

Glenn S. Cory (date of birth April 16, 1957), convicted on November 28, 1988, of two counts of Uttering a Forged Writing, was sentenced to ninety days in jail for each count (stayed), three years of probation (each count, to run concurrent), and to pay restitution. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 5–1. Following the Board's recommendation, Mr. Cory was granted a pardon on November 25, 2009, based on a lack of prior and subsequent criminal justice system contact, the non-violent nature of the crime, and the length of time since the offense.

Greg Anderson (date of birth November 25, 1979), convicted on September 10, 1998, of Burglary (PTAC) and Theft (PTAC), was sentenced to seven months in jail with Huber, five years of probation, and to pay restitution. The Governor's Pardon Advisory Board recommended granting a pardon by a vote of 5–1. Following the Board's recommendation, Mr. Anderson was granted a pardon on November 25, 2009, based on the length of time since the offense, no subsequent criminal justice system contact, a low risk of reoffending, his young age at the time of conviction, and the recommendation of the District Attorney.

Devery Harrington (date of birth October 5, 1963), convicted on December 4, 1998 and of Manufacture/Deliver Cocaine on October 6, 1988, was sentenced to pay a fine. The Governor's Pardon Advisory Board was split by a vote of 3–3. Mr. Harrington was granted a pardon on November 25, 2009,

based on his positive adjustment, a lack of subsequent criminal justice system contacts, the length of time since the offense, and his solid work history.

Respectfully Submitted,
JIM DOYLE
Governor

**State of Wisconsin
Department of Employee Trust Funds**

March 24, 2010

The Honorable, The Legislature:

I am pleased to present the Comprehensive Annual Financial Report (CAFR) of the Wisconsin Department of Employee Trust Funds (ETF) for the year ended December 31, 2008. Management is responsible for both the accuracy of the data and the completeness and fairness of the presentation. I hope you will find this report useful and informative.

This report is intended to provide comprehensive and reliable information about ETF, the WRS, and other benefit plans and trust funds administered by the Department. I would like to express my appreciation to the Governor, members of the legislature, members of the boards, staff, employers, participants, and all those whose efforts and interest combine to assure the successful operation of our system, while protecting the integrity of the trust funds.

Sincerely,
DAVID A. STELLA
Secretary

**State of Wisconsin
Department of Administration**

May 11, 2010

The Honorable, The Legislature:

In accordance with s.16.75(3m)(c)4, Wis. Stats., enclosed is the State of Wisconsin Minority Business Report for Fiscal Year 2009. The report provides information on State Agency and University of Wisconsin purchasing with minority business enterprises (MBE) certified by the Wisconsin Department of Commerce.

Overall MBE purchasing totaled \$77,134,785. The Fiscal Year 2009 (FY09) MBE spending level and percentage ratio were the second highest in program history. This figure represents a MBE participation rate of 4.49 percent on overall spending in FY 09. Other highlights include:

State architectural/engineering spend represented a 9.74% MBE participation rate thus meeting or exceeding the five percent goal for the twenty-second consecutive year. State construction MBE spend was 5.27% and state highway MBE contracting increased by more than 22%.

State agency general procurement activity with MBEs grew by more than 18% from Fiscal Year 2008.

Twelve agencies exceeded the five percent MBE goal, and Cabinet agencies specifically have a three year (FY 07–09) average MBE spending rate of nearly six percent.

State government will continue to value its minority-owned business partnership and remain committed to helping

minority-owned businesses succeed and compete for state contracts.

Sincerely,
MICHAEL L. MORGAN
Secretary

Referred to committee on **Labor, Elections, and Urban Affairs.**

**State of Wisconsin
Legislative Audit Bureau**

May 12, 2010

The Honorable, The Legislature:

We have completed an evaluation of public health programs and medical education and research initiatives established by the Medical College of Wisconsin and the University of Wisconsin (UW) School of Medicine and Public Health. The schools established these programs and initiatives with funding they received in trust when Blue Cross Blue Shield United of Wisconsin became a for-profit, publicly held stock insurance corporation. They requested our evaluation to fulfill requirements in a March 2000 order by the Commissioner of Insurance.

The Commissioner's order divided the funds equally and restricted their use to medical education and research and public health initiatives. From December 2003 through December 2007, a total of \$630.4 million was transferred to permanent endowments managed separately by each school. Through December 31, 2008, the Medical College expended \$32.1 million and the UW School of Medicine and Public Health expended \$44.1 million on grants and administration.

Both schools have generally complied with the requirements they established for awarding and monitoring their funding, and we found that most grantees met the objectives described in their proposals. However, there were some exceptions, and we include recommendations for the schools to improve grant management and oversight. We also identified policy issues for their consideration, including possible changes to the conflict-of-interest policies for the committees that award some funds at each school and the need to continue careful monitoring of endowment balances. We also suggest the Commissioner of Insurance consider clarifying the definition of supplanting, the degree to which medical education and research funds may be allocated by the schools' Deans on a noncompetitive basis, and the extent to which the schools should directly expend public health funding rather than award it to community-based programs administered by other entities.

We appreciate the courtesy and cooperation extended to us by the schools and grantees as we conducted this evaluation. Results of our in-depth review of 40 individual projects funded by each school are summarized in a separate document (report 10–7). The schools' responses to our evaluation follow the appendices.

Sincerely,
JANICE MUELLER
State Auditor

**State of Wisconsin
Legislative Audit Bureau**

May 12, 2010

The Honorable, The Legislature:

We have completed an evaluation of public health programs and medical education and research initiatives established by the Medical College of Wisconsin and the University of Wisconsin School of Medicine and Public Health. The schools established these programs and initiatives with funding they received in trust when Blue Cross Blue Shield United of Wisconsin became a for-profit, publicly held stock insurance corporation. They requested our evaluation to fulfill requirements in a March 2000 order by the Commissioner of Insurance.

This report includes profiles of the 80 grant projects we reviewed in detail, including 20 public health projects and 20 medical education and research projects at each school. For each project, we interviewed the grantees and reviewed project proposals, budgets, expenditures, and progress reports. Our complete evaluation of each schools' program is report 10-6, which includes an assessment of expenditures and operations, as well as policy issues for consideration by the Commissioner of Insurance, the Wisconsin United for Health Foundation, and the schools.

We appreciate the courtesy and cooperation extended to us by the schools and grantees as we conducted this evaluation. The schools' responses to our evaluation follow the appendices of report 10-6.

Sincerely,
JANICE MUELLER
 State Auditor

**State of Wisconsin
 Department of Veterans Affairs**

May 13, 2010

The Honorable, The Legislature:

In accordance with Wis. Stats. s.45.35(3d)(b), the Wisconsin Department of Veterans Affairs and the Wisconsin Council on Veterans Programs jointly submit the biennial report to the Chief Clerk of each house of the Legislature for distribution to the Legislature under s.13.172(2) in odd numbered years. The reports were due September 30, 2009 and included a general summary of the activities and membership for the 2007-2009 of the Council on Veterans Programs and from each organization represented on the Council.

As of the September 30, 2009 deadline, all Council member organizations but the Paralyzed Veterans of America and United Women Veterans submitted reports. Those final two reports have been received and attached hereto.

Please do not hesitate to contact me at (608) 266-1315 for further information or assistance.

Sincerely,
KENNETH B. BLACK
 Secretary

**State of Wisconsin
 Claims Board**

May 14, 2010

The Honorable, The Senate:

Enclosed is the report of the State Claims Board covering the claims heard on April 28, 2010.

Those claims approved for payment pursuant to the provisions of s. 16.007 and 755.05 Stats., have been paid directly by the Board.

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

Sincerely,
CARI ANNE RENLUND
 Secretary

STATE OF WISCONSIN CLAIMS BOARD

The State of Wisconsin Claims Board conducted hearings at the State Capitol Building in Madison, Wisconsin, on April 28, 2010, upon the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. Workforce Resource, Inc.	Workforce Development & Administration	\$120,833.1
2. Chaunte Ott	Innocent Convict (§ 775.05, Stats.)	\$25,000.00
3. Paul Penkalski	University of Wisconsin System	\$134,149.68
4. Evelio Duarte VestarI	Innocent Convict (§ 775.05, Stats.)	\$25,000,000 .00

The following claims were considered and decided without hearings:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
5. H & J Companies, Inc.	Financial Institutions	\$1,654.00
6. Papu Corporation	Transportation	\$3,000,000.00
7. Kevin Ziegert	Corrections	\$129.95
8. William F. Markwardt Trust	Revenue	\$3,430.00
9. Martin & Julia Zielinski	Revenue	\$7,420.00

The Board Finds:

1. Workforce Resource, Inc. of Menomonie, Wisconsin claims \$120,833.12 for damages relating to an alleged breach of a lease. The claimant, WRI, has partnered with the state to operate employment programs in western Wisconsin for more than 25 years. The claimant states that in 2004, DWD was looking to consolidate office space at a location near River Falls. WRI states that DWD proposed that the claimant serve as the master lease holder and then sublet space to DWD. WRI relied on the positive work relationship it had with DWD in the past and also on staff assurances that the state had a "rock solid commitment" to the terms of the sublease agreement. Based on these assurances, WRI executed the master lease agreement and proceeded to coordinate the build-out of the facility to DWD's specifications. DWD moved into the premises and began to make rent payments. DWD payments were smaller than agreed upon because DWD indicated it no longer needed to use 200 square feet of the space. WRI repeatedly requested that DWD sign a written sublease agreement and submitted multiple draft agreements to DWD and DOA for signature. The parties worked to revise the draft in the ensuing months. WRI states that WRI and DWD reached an agreement on the final terms of the sublease, which was submitted to DOA for approval. WRI

states that DOA provided final approval of the sublease in August 2007. Despite this approval, DOA staff neglected to get the sublease signed, however even without a signed lease, both WRI and DWD honored their obligations under the sublease agreement. Although DWD continued to make reduced rental payments, WRI alleges that state staff did eventually concede that DWD was liable for the higher rent payment, encompassing the entire space that had been prepared to DWD's specifications. WRI believes that all evidence points to the fact that there was an unsigned agreement between the parties. WRI states that DOA/DWD breached this unsigned agreement when DWD vacated the premises in June 2008. The claimant states that although § 704.01(1), Wis. Stats., requires that a lease longer than one year must be in written form, Wis. Stat. § 706.04, provides an exception that an unsigned lease agreement is enforceable "provided all of the elements of the transaction are clearly and satisfactorily proved and – the deficiency of the conveyance may be supplied by reformation in equity." WRI requests reimbursement for the full rental payments for the 37 months remaining on the lease after DWD vacated, as well as \$421.90/mo for the 21 months DWD made reduced rental payments in violation of the agreement.

Both DWD and DOA recommend denial of this claim. DWD notes that it has no authority to lease property without the approval of DOA and therefore believes there is no basis for any claim against DWD. DOA and DWD both deny that they persuaded WRI to enter into a master lease for the River Falls facility. DWD notes that discussions between the department and WRI relating to another facility in Rice Lake, Wisconsin, included the possibility of WRI taking on a master lease; however those discussions have no bearing on the negotiations for the River Falls facility. In fact, the lengthy emails and discussions presented by WRI as evidence for their claim actually point to the fact that the parties did not reach an agreement relating to the River Falls facility and one of the main disagreements between the parties was the rental amount. WRI's acceptance of the reduced rental payments from DWD and the absence of a signed agreement constituted acceptance of a month to month tenancy, which the state was forced to terminate in June 2008 for budgetary reasons.

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 Renlund not participating.)

2. Chaunte Ott of Oak Creek, Wisconsin claims \$25,000.00 compensation for Innocent Convict pursuant to § 775.05, Wis. Stats. The claimant spent nearly 13 years in prison after being convicted of the August 1994 murder of 16 year old Jessica Payne. Payne's body was found outside a vacant house in Milwaukee with her throat slashed and evidence of sexual assault. Police arrested and interrogated Richard Gwin and Sam Hadaway in relation to the murder and both men alleged the claimant was involved in the homicide. The claimant was arrested and charged with 1st degree intentional homicide. Both Gwin and Hadaway testified against the claimant at trial. The defense argued that Gwin and Hadaway's testimony was inconsistent and compromised by the favorable treatment they received from the State. In addition, DNA testing on the semen

found at the scene was inconclusive and, despite the violent nature of the crime, there was no physical evidence linking the claimant to the crime scene. However, the claimant was convicted and sentenced to life in prison.

In 2002, the Wisconsin Innocence Project requested new DNA testing of the semen found at the Payne crime scene. The new testing technology excluded the claimant as the source of the semen. (The testing also excluded Hadaway and Gwyn.) The new DNA profile did not match any profile in national DNA databanks. In July 2007, the State informed the Innocent Project that this unknown DNA profile had been found on the victims of two other unsolved homicides within a few blocks of the Payne murder. Both of these homicides had occurred while the claimant was incarcerated.

In October 2007, the claimant filed a motion for a new trial based on the new DNA evidence. The motion was denied. The claimant appealed. In addition to the new DNA results, he submitted an affidavit signed by Hadaway recanting his trial testimony. Hadaway stated that he had been pressured by police to implicate the claimant. Hadaway's sister also stated that Hadaway had told her numerous times that he had lied at trial due to police pressure. Furthermore, the State's other witness, Gwin, had also recanted his testimony prior to his death several years after Payne's murder. Gwin's sister stated that Gwin had told her that police put severe pressure on him during the investigation and that he had to lie in order to go home. Based on the new DNA evidence and questions regarding the credibility of Gwin and Hadaway's testimony, the Court of Appeals reversed the Circuit Court and granted the claimant a new trial. The claimant was released in January 2009 and all charges were dismissed in June 2009.

In September 2009, the Milwaukee County Police Department announced that they had matched the DNA profile from 9 unsolved murders on Milwaukee's north side, including that of Jessica Payne, to a man named Walter Ellis. Mr. Ellis has been charged with the murders of seven of these victims, although he has yet to be charged with the Payne murder.

The claimant believes he has provided clear and convincing evidence of his innocence. The physical evidence at the crime scene implicates Mr. Ellis, not the claimant, indeed, there is no physical evidence linking the claimant to the crime. Furthermore, two of the State's key witnesses against the claimant have recanted their testimony. Finally, the claimant did not in any way contribute to his conviction but has steadfastly maintained his innocence.

The Milwaukee County District Attorney's Office has no response to this claim at this time. The Payne homicide investigation is ongoing and litigation associated with this matter is active and pending.

The Board concludes that there is clear and convincing evidence the claimant was innocent of the crime for which he was convicted. The Board further concluded, under authority of § 775.05, Stats., the claim should be paid in the amount of \$25,000.00, and that payment should be made from the Claims Board appropriation § 20.505(4)(d), Stats. (Member Means dissenting.)

3. Paul Penkalski of Madison, Wisconsin claims \$134,149.68 for damages allegedly relating to the 2004 and 2005 revocations of the claimant's Wisconsin Union membership, and related actions by UW-Madison employees.

The claimant states that in 2004, his Wisconsin Union membership was revoked without any warning, contrary to Wisconsin Union policies. The claimant alleges that this revocation constituted a breach of contract. The claimant states that the revocation severely damaged his reputation with his potential graduate advisor at UW, fellow members of the Hoofers Sailing Club, and a woman with whom he had a personal relationship. The claimant states that he was forced to spend many hours working to get his membership reinstated. The claimant's Union membership was reinstated two months later, with an acknowledgement by UW that the revocation "did not fully comply with the Union's internal policies for such a sanction." The claimant states that he was continually abused by UW employees who denied him access to public meetings and buildings and issued numerous citations against him. He states that his Union membership was illegally revoked a 2nd time in 2005. The claimant states that fighting this alleged abuse by UW has caused him severe mental distress. He requests reimbursement for the many hours he alleges he has been forced to spend fighting the harassing and illegal actions by UW employees.

UW strongly believes this claim is without merit and should be denied. UW alleges that the claimant has a long history of behavioral problems in and around the university, many of which predate the incidents relating to this claim. UW states that the revocation of the claimant's Union membership in 2004 was related to a phone conversation the claimant had with UW parking staff. UW states that the claimant called the UW-Madison Parking and Transportation Office to dispute a parking ticket and at some point during the conversation told the UW employee "I would rather shoot you than pay the ticket." UW considered this to be a serious threat and it issued a citation and revoked the claimant's Union membership. UW notes that the claimant has already litigated this matter in Small Claims Court and the court dismissed the case, granting judgment in favor of the UW employee. UW states that it has devoted substantial resources to the claimant's many, many frivolous claims against various UW employees. UW also notes that the claimant's actions have led to anxiety on the part of UW-Madison students and staff, to the point where several individuals have restraining orders in effect against him. UW believes that the allegations made by the claimant in his claim are without merit and are simply a continuation of his campaign of harassment against UW-Madison and Union employees. UW believes there is no equitable or legal basis for payment 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.

4. Evelio Duarte-Vestar of Madison, Wisconsin claims \$25,000,000.00 for compensation as an innocent convict pursuant to § 775.05, Stats. The claimant alleges that in March 1987, February 1993 and December 1993, he was convicted and sentenced for crimes with which he was never charged. The claimant alleges that the criminal complaints do not show the crimes for which he was convicted, specifically: Felony Possession of Cocaine (Case No. 86-CF-0671), Domestic Abuse, "Restraining order & injunctions" and Criminal

Trespass (92-CM-3242), and Aggravated Battery (92-CM-3242 and 93-CM-1307). The claimant requests reimbursement for false incarceration.

The Dane County District Attorney's Office recommends denial of this claim. The DA's Office states that the claimant was convicted by jury verdicts and properly sentenced in these cases. The DA's Office believes the claimant has not made even a colorable claim of innocence and 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.

5. H & J Companies, Inc. of Alma, Wisconsin claims \$1,654.00 for overpayment of a 2009 Foreign Corporation Report fee. The claimant filed its 2009 Foreign Corporation Annual Report and paid the filing fee of \$1,734. The claimant states that it later discovered that its previous accountant had misreported the amount of liabilities and capital on the claimant's financial statements. Based on this error, the 2009 Foreign Corporation Annual Report showed an increase in the claimant's capital of \$551,387, and the \$1,734 filing fee was based on this reported increase. The claimant states that there actually was no increase in capital and it filed Articles of Corrections with DFI reflecting the corrected amount of liabilities and capital. The corrected report would result in a filing fee of only \$80. The claimant is requesting refund of the amount of fee overpaid.

DFI recommends denial of this claim. DFI points to the fact that the claimant has exclusive control of the records upon which the report's figures are based. DFI states that it has no way to verify the accuracy of any of the information provided by the claimant, either in the original report or in the Articles of Correction. DFI notes that the Annual Report Form gives notice to filers that "The filer is solely responsible for the accuracy of the information provided. Please double check your entries before continuing." DFI further points to the fact that there was no error on the part of any state employee or agency. Finally, DFI notes that the Claims Board has a longstanding history of denying claims of this nature.

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. Papu Corporation of Pleasant Prairie, Wisconsin claims \$3,000,000.00 for alleged fair market value of business. The claimant operated a truck stop/convenience store on Hwy C in Kenosha County from 1992 until May 2009. DOT acquired the claimant's property (Parcel #3) as part of a highway improvement project. The claimant alleges that DOT had an obligation to make available to the claimant a "comparable replacement business (property]" pursuant to § 32.05(8), Stats. The claimant states that in May 2009, DOT closed off portions of the I94/CTH C providing access to the claimant's truck stop business. The claimant states that DOT took this action without first making available a comparable replacement property to the claimant, essentially putting the claimant out of business. The claimant demands payment of

\$3,000,000, which is a real estate appraiser's assessment of the fair market value of the business as of May 2009.

DOT recommends denial of this claim. DOT believes the claimant's allegations have no merit and that the department fulfilled its statutory obligations related to this dispute. DOT states that it properly acquired the claimant's property in July 2008, as part of a highway improvement project. DOT then leased the property back to the claimant, which lease terminated in December 2008 "unless extended by mutual agreement." DOT points to the fact that the claimant has provided no evidence of any lease extension. Therefore, the claimant's complaint that DOT closed off access to the claimant's business in May 2009 takes place more than five months after the claimant's lease on the property had expired. DOT states that it did assist the claimant in finding a new site for its business. DOT points to the claimant's unsuccessful lawsuit in Kenosha County as further evidence that the claim has no merit.

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. Kevin Ziegert of Hortonville, WI claims \$129.95 for costs incurred relating to an error in DOC's electronic monitoring system. On March 3, 2009, the claimant was arrested in relation to an outstanding October 2008 warrant that should no longer have been in the system. The October 2008 warrant related to a work release error while the claimant was under electronic monitoring. That error was corrected, however, DOC staff failed to remove the warrant from the system. The old warrant showed up when an office ran random license plate checks at a gas station where the claimant stopped in 2009. The claimant was arrested and incurred a \$112.88 towing charge for his vehicle. His mother had to take 1.25 hours off of work to pick him up from jail and go get his car. He therefore also requests reimbursement for \$17.07 wages and mileage compensation for her 51 mile trip.

DOC recommends payment of this claim. The claimant incurred costs relating to an incorrect entry in the department's electronic monitoring system, when DOC staff failed to cancel a warrant in the system. The department has no objection to payment of the claimant's costs relating to towing and mileage fees, in the amount of \$129.95.

The Board concludes the claim should be paid in the reduced amount of \$112.88 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Corrections appropriation § 20.410(1)(b), Stats.

8. The William F. Markwardt Trust of Appleton, Wisconsin claims \$3,430.00 for refund of overpayment of estate taxes caused by a decimal point error in the reported value of stock. William Markwardt died in July 2007. His estate taxes were timely filed by his trustee, reporting a tax due of \$34,457, which the estate paid. DOR accepted the return and issued a Certificate Determining Estate Tax on October 3, 2008. Pursuant to § 72.30(4), Wis. Stats., this determination of tax is final unless appealed to the Circuit Court within six months of the date the certificate is issued. After receiving the certificate, the estate trustee filed Final Fiduciary Income Tax Returns.

Subsequent to filing those returns, the stock value error was discovered. The estate and income tax returns had correctly reported 132.9489 shares of stock valued at \$54.05 per share. However, there was a data input error which incorrectly valued the stock at \$540.50 per share. The correct total value of the stock at the time of death was \$7,186, however, because of the calculation error; the returns show a total value of \$71,860. The trustee filed amended income tax returns to correct the error; however there is no statutory process by which the estate taxes can be amended once six months has passed from the date of the Certificate Determining Estate Tax. The claimant believes that there is an equitable argument for refund of the overpayment and notes that it could have, but did not, attempt to obtain a large taxable loss for income taxes based on the error found in the estate tax return.

DOR recommends denial of this claim. Section 72.30(4), Wis. Stats., provides that DOR's Certificate Determining Estate Tax is final unless an interested person applies to the Circuit Court within six months of the date the certificate is issued. DOR further notes that this language is included on the certificate. The claimant did not appeal to the Circuit Court prior to the April 3, 2009, six month deadline; therefore the department's determination of tax is final.

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. Martin and Julia Zielinski of Oak Creek, Wisconsin claim \$7,420.00 for income tax refunds denied by DOR because the taxes were filed more than four years after the original due date. The claimants state that they had many personal issues which led to their not filing timely tax returns, including flooding, serious health problems, and legal disputes with the federal government. The claimants believed that as long as they had a refund coming and did not owe taxes, they could file the returns at their convenience and receive their refunds. The claimants point to the fact that nowhere on any tax form does it state that tax refunds must be claimed within four years. The claimants also state that they had numerous contacts with DOR prior to filing and were told that there was no penalty for filing late taxes if the taxpayer was due a refund. The claimants state that DOR never informed them that tax refunds had to be claimed within four years. The claimants filed 22 years of back taxes in 2008. Three of those returns showed a tax due and 19 returns showed a refund due. Fifteen refunds claimed on returns from 1981 to 2003 were denied based on the four year statute of limitations, § 71.75(2) and (6), Wis. Stats. The claimants cannot believe that they can be penalized by a law about which they were never notified. The claimants believe that DOR failed in its basic duty by not informing them of the 4 year limit to claim their refunds. The claimants further allege that DOR was extremely unhelpful when the claimants contacted the department to obtain assistance recreating their records prior to filing their taxes. The claimants believe DOR was deceitful in its dealings with them and that taxpayers cannot be penalized for laws about which they are not aware. They request return of the refunds denied under the statute of limitations.

DOR recommends denial of this claim. The department states that the claimants chose not to file tax returns, as required by law, for 22 years. DOR records indicate that in May 2009, the claimants voluntarily filed 22 income tax returns ranging from 1981 to 2007. Fifteen refunds were denied due to the four year statute of limitations. DOR states that, in an effort to be equitable, the department reduced the total tax amount due for the years 1987, 1991 and 1992 from \$3,473.76 to \$0. Pursuant to § 71.75(2) and (6), Wis. Stats., the department is prohibited from refunding any overpayment for a return filed more than four years after the original due date. DOR notes that directions on tax forms inform taxpayers that the return is due by April 15th of the following year. DOR further notes that there is no indication in any instructions that returns may be filed at the taxpayer's convenience.

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 concludes:

That the following claims are denied:

Workforce Resource, Inc. Paul Penkalski
 Evelio Duarte–Vestar
 H & J Companies, Inc.
 Papu Corporation
 William F. Markwardt Trust
 Martin and Julia Zielinski

That payment of the below amounts to the identified claimants from the following statutory appropriations is justified under § 16.007, Stats:

Kevin Ziegert \$112.18 § 20.410(1)(b), Stats.

That payment of the below amounts to the identified claimants from the following statutory appropriations is justified under § 775.05, Stats:

Chaunte Ott \$25,000.00 § 20.505(4)(d), Stats.

Dated at Madison, Wisconsin this 14th day of May, 2010.

STEVE MEANS
 Chair, Representative of the Attorney General

DAVE HANSEN
 Senate Finance Committee

CARI ANNE RENLUND
 Secretary, Representative of the Secretary of Administration

GARY SHERMAN
 Assembly Finance Committee

SUSAN CRAWFORD
 Representative of the Governor

**State of Wisconsin
 Government Accountability Board**

May 18, 2010
 The Honorable, The Senate:

The following lobbyists have been authorized to act on behalf of the organizations set opposite their names.

For more detailed information about these lobbyists and organizations and a complete list of organizations and people authorized to lobby the 2009–2010 session of the legislature, visit the Government Accountability Board's web site at: <http://ethics.state.wi.us/>.

Elverman, Timothy J	Blood Center of Wisconsin, Inc.
Evenson, Lisa	Green Bay Metropolitan Sewerage District
Fitzgerald, Moira E	Blood Center of Wisconsin, Inc.
Schellpfeffer, Jon	Madison Metropolitan Sewerage District
Sigmund, Thomas	Green Bay Metropolitan Sewerage District
Steelman, Lisa	Novartis Pharmaceuticals Corporation
Taylor, David	Madison Metropolitan Sewerage District

Also available from the Wisconsin Government Accountability Board are reports identifying the amount and value of time state agencies have spent to affect legislative action and reports of expenditures for lobbying activities filed by organizations that employ lobbyists.

Sincerely,
KEVIN KENNEDY
 Director and General Counsel

WHA Information Center

May 19, 2010
 The Honorable, The Senate:

Enclosed is a hard copy of the *2008 Health Care Data Report* produced by WHA Information Center pursuant to s.153.22, Wis. Stats. The report was posted on our Web site in March 2010. Please feel free to download and print additional copies.

If you have any questions regarding the report you may contact me at 608–274–1820, 800–231–8340 or jkachelski@wha.org.

Sincerely,
JOSEPH KACHELSKI
 Vice President

**State of Wisconsin
 Department of Health Services**

May 20, 2010
 The Honorable, The Legislature:

Pursuant to Wis. Stats., s. 50.04(5)(fr), I am submitting the Department of Health Services' annual report to the Legislature related to Class A violation committed by nursing homes, and forfeitures assessed on nursing homes for those violations. As defined by Wis. Stats., s. 50.04(3b), a Class A violation is "...a violation of this subchapter or of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a nursing home presenting a substantial probability that death or serious mental or physical harm to a resident will result..."

The Department issued 28 Class A violations in calendar year 2009. The enclosed report provides details on all Class A

violation, including the original forfeiture amount assessed and the status of payment.

Sincerely,
KAREN E. TIMBERLAKE
Secretary

**State of Wisconsin
Government Accountability Board**

May 25, 2010

The Honorable, The Senate:

The following lobbyists have been authorized to act on behalf of the organizations set opposite their names.

For more detailed information about these lobbyists and organizations and a complete list of organizations and people authorized to lobby the 2009–2010 session of the legislature, visit the Government Accountability Board’s web site at: <http://gab.wi.gov/>

Bochert, Linda Michels Corporation

Also available from the Wisconsin Government Accountability Board are reports identifying the amount and value of time state agencies have spent to affect legislative action and reports of expenditures for lobbying activities filed by organizations that employ lobbyists.

Sincerely,
KEVIN KENNEDY
Director and General Counsel

**State of Wisconsin
Legislative Audit Bureau**

May 26, 2010

The Honorable, The Legislature:

As required by s. 13.94(1)(em), Wis. Stats., we have completed our financial audit of the Wisconsin Lottery, which is administered by the Department of Revenue. We have issued an unqualified opinion on the Wisconsin Lottery’s financial statements for fiscal year (FY) 2008–09 and FY 2007–08, and we found that the Wisconsin Lottery was in compliance with statutory spending limitations related to prizes, informational advertising, retailer compensation, and administrative expenses.

Ticket sales totaled \$473.4 million in FY 2008–09 but decreased \$21.3 million, or 4.3 percent, from the prior year. Wisconsin Lottery staff attribute this decline to the economic downturn and the timing of large Powerball jackpots, which have a significant effect on sales.

Total operating expenses were \$344.5 million in FY 2008–09, which is 2.5 percent less than in FY 2007–08. This decrease in operating expenses is less than the decrease in ticket sales because some expenses do not fluctuate with sales. Since FY 2007–08, informational advertising expenses have been permitted to total no more than \$7.5 million annually, which is an increase of \$2.9 million from prior years.

Lottery proceeds used for property tax relief totaled \$132.4 million in FY 2008–09. In October 2009, the Department of Administration and the Legislature’s Joint Committee on Finance authorized the use of \$130.2 million in Wisconsin Lottery proceeds for property tax relief in FY 2009–10, including \$115.5 million for the Lottery and Gaming Tax Credit and \$14.7 million for the Farmland Tax Relief Credit.

We appreciate the courtesy and cooperation extended to us by Wisconsin Lottery staff in the Department of Revenue.

Respectfully Submitted,
JANICE MUELLER
State Auditor

**State of Wisconsin
Department of Administration**

May 27, 2010

The Honorable, The Legislature:

This report is transmitted as required by s. 20.002(11)(f), Wisconsin Statutes, (for distribution to the appropriate standing committees under s. 13.172(3), Wisconsin Statutes) and confirms that the Department of Administration has found it necessary to exercise the “temporary reallocation of balances” authority provided by this section in order to meet payment responsibilities and cover resulting negative cash balances during the month of April 2010.

On April 1, 2010, the Utility Public Benefits Fund cash balance closed at a negative \$8.2 million. This negative balance continued through April 30, 2010, when the fund’s cash balance closed at a negative \$10.1 million (its intra–month low). The negative balance was due to the difference in the timing of revenues and expenditures.

On April 1, 2010, the Permanent Endowment Fund cash balance closed at a negative \$2.0 million (its intra–month low). This negative balance continued through April 16, 2010, when the fund’s cash balance closed at a positive \$127.7 million. The negative balance was due to the difference in the timing of revenues and expenditures.

On April 1, 2010, the Medical Assistance Trust Fund cash balance closed at a negative \$312.8 million (its intra–month low). This negative balance continued through April 30, 2010, when the fund’s cash balance closed at a negative \$307.0 million. The negative balance was due to the difference in the timing of revenues and expenditures.

On April 1, 2010, the Police and Fire Protection Fund cash balance closed at a negative \$18.7 million (its intra–month low). This negative balance continued through April 30, 2010, when the fund’s cash balance closed at a negative \$14.6 million. The negative balance was due to the difference in the timing of revenues and expenditures.

The Utility Public Benefits Fund, Permanent Endowment Fund, Medical Assistance Trust Fund, and Police and Fire Protection Fund shortfalls were not in excess of the statutory interfund borrowing limitations and did not exceed the balances of the funds available for interfund borrowing.

The distribution of interest earnings to investment pool participants is based on the average daily balance in the pool and each fund’s share. Therefore, the monthly calculation by the State Controller’s Office will automatically reflect the use of these temporary reallocations of balance authority, and as a result, the funds requiring the use of the authority will effectively bear the interest cost.

Sincerely,
MICHAEL L. MORGAN
Secretary

Referred to joint committee on **Finance**.

**State of Wisconsin
Legislative Audit Bureau**

May 27, 2010

The Honorable, The Legislature:

We have completed a review of efforts by the State and by local governments to prepare for and minimize the effects of emergencies such as natural disasters and hostile action. From fiscal year (FY) 2004–05 through FY 2008–09, the federal Department of Homeland Security awarded Wisconsin a total of \$318.5 million in federal grants for this purpose, including \$241.0 million for emergency management activities and \$77.5 million after presidentially declared disasters. Wisconsin Emergency Management (WEM) in the Department of Military Affairs is the lead state agency in planning for emergencies, while the Office of Justice Assistance (OJA) distributes most federal funds.

The FY 2008–09 emergency management grant funds we reviewed were spent in accordance with broad federal requirements, but some priorities remain unmet. Most notably, Wisconsin does not yet have a statewide communications system connecting all emergency responders. The basic infrastructure is expected to be operational in 2011, but unresolved issues – including costs to local governments for purchasing the communications equipment needed to gain access to the system and the funding sources that will be

available to help them fund those costs – will continue to pose challenges to the system's development.

State and local government responses to two recent and significant natural disasters indicate that additional efforts are needed to improve emergency preparedness. We provide several recommendations, including that WEM improve and formalize its process for reviewing responses to emergencies and using the results to improve preparedness statewide.

We appreciate the courtesy and cooperation extended to us by WEM, OJA, and local emergency responders. Responses from the Department of Military Affairs and OJA follow the appendices.

Respectfully Submitted,
JANICE MUELLER
State Auditor

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

Senate Clearinghouse Rule 10–012

Relating to the definition of volatile organic compounds.
Submitted by Department of Natural Resources.
Report received from Agency, June 1, 2010.
Referred to committee on **Environment**, June 1, 2010.