

2011 DRAFTING REQUEST

Bill

Received: 06/09/2011

Received By: jkuesel

Wanted: As time permits

Companion to LRB:

For: Sheila Harsdorf (608) 266-7745

By/Representing: Matt Wuebke

May Contact:

Drafter: jkuesel

Subject: State Finance - claims agnst st

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Sen.Harsdorf@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Workforce Resource claim

Instructions:

Per attached E mail, 6/8/11.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkuesel 07/08/2011	nmatzke 07/11/2011		_____			State
/1			rschluet 07/11/2011	_____	sbasford 07/11/2011		State
/2	jkuesel 08/31/2011	kfollett 08/31/2011	rschluet 09/01/2011	_____	mbarman 09/01/2011	mbarman 09/02/2011	

FE Sent For:

at intro  
9-15-11

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FE Sent For:

  
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7/11/11

FE Sent For:

<END>

**Kuesel, Jeffery**

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**From:** Woebke, Matt  
**Sent:** Wednesday, June 08, 2011 1:34 PM  
**To:** Kuesel, Jeffery  
**Subject:** Drafting request - Workforce Resource claim  
**Attachments:** 6.8.11\_Workforce Resource letter and claim.pdf

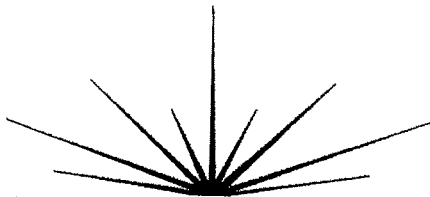
Hi Jeff,

Per my voice message, we would like have a bill drafted to address Workforce Resource's claim against the state. Attached is the documents they provided us on this issue. Please let me know if you have any questions.

Thanks,  
Matt Woebke  
Office of Sen. Sheila Harsdorf  
608-266-7745



6.8.11\_Workforce  
Resource lett...



WORKFORCE RESOURCE

March 2, 2011

401 Technology Drive East, Suite 100, Menomonie, WI 54751 • Phone: 715.232.1412 • FAX: 715.232.2240

West Central Wisconsin

Wisconsin State Senator Sheila Harsdorf  
Room 18 South  
Wisconsin State Capitol  
Madison, WI 53707

Dear Senator Harsdorf

I am writing to request legislative intervention regarding a claim Workforce Resource, Inc. has submitted relating to breach of lease commitments at the St. Croix Valley Job Center in River Falls, by the Department of Workforce Development. The total relief that we are seeking is \$129,693.02 based the commitments made for the space from the time of abandonment to the end of the term of occupancy (8/31/2011) and under-payment of costs during the time of occupancy. This resulted in Workforce Resource having to cover the entire cost of this vacant space as it is not readily converted to other uses. Attempts to find others to occupy this space have been unsuccessful. We have filed suit against the Department and key personnel associated with the actions and the resultant losses to Workforce Resource, Inc.

We were required to first submit a claim to the State Claims Board. That claim having been denied, we are required to seek legislative remedy through the Wisconsin State Legislature. The Legislature may either honor this claim, and the process will end at that point, or deny the claim thus allowing the suit to proceed with our having exhausted all non-judicial remedies.

I have attached a copy of the Claim submitted to the State Claims Board to provide background and detail relating to this matter. Both myself and our attorney, Travis West, can be at your disposal to assist in this matter. Since filing the original action, Mr. West has changed law firms, so the contact information in the document is not currently accurate. Attorney West can be reached at: While I can be contacted at:

Travis James West  
Attorney, CAMS  
Solheim Billing & Grimmer, S.C.  
One South Pinckney Street, Suite 301  
P.O. Box 1644  
Madison, WI 53701-1644  
Phone: 608-561-1779  
Email: [twest@sbglaw.com](mailto:twest@sbglaw.com)

Richard J. Best  
Executive Director  
Workforce Resource, Inc.  
401 Technology Drive East  
Menomonie, WI 54751  
Phone: 715-232-7380 ext 1010  
Cell: 715-556-3375  
Email: [bestd@workforceresource.org](mailto:bestd@workforceresource.org)

Thank you very much for your consideration of this request and we look forward to working with you to bring resolution to this matter.

Respectfully

  
Richard J. Best  
Executive Director



Whyte Hirschboeck Dudek S.C.

---

Travis James West  
608-234-6043  
twest@whdlaw.com

August 3, 2009

**VIA HAND DELIVERY**

State of Wisconsin Claims Board  
Department of Administration  
Attn: Patricia Reardon  
101 E. Wilson Street, 10<sup>th</sup> Floor  
Madison, WI 53707-7864

Re: Workforce Resource, Inc - Claim for Damages Against the State of Wisconsin

Dear Ms. Reardon:

On behalf of Workforce Resource, Inc., Whyte Hirschboeck Dudek S.C. submits the following documents for filing with the State of Wisconsin Claims Board:

- Claim for Damages Against the State of Wisconsin
- Statement of Circumstances and Itemization of Claims
- Supporting Exhibits A through FF (Bates Labeled WRI0001 - WRI0187)

Pursuant to Wis. Stat. § 16.007(3), Workforce Resource, Inc. respectfully requests this matter be scheduled for hearing by the Board, and that notice of such hearing be provided once placed on the calendar.

Whyte Hirschboeck Dudek S.C.

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Workforce Resource, Inc.  
Claim for Damages  
August 3, 2009  
Page 2

Thank you for your assistance.

Sincerely,



Travis James West

TJW/bre  
Enclosures

cc: Workforce Resource, Inc. (via U.S. Mail and email)





## STATEMENT OF CIRCUMSTANCES AND ITEMIZATION OF CLAIMS

Claimant Workforce Resource, Inc. ("WRI") provides the following statement of the circumstances supporting its claim for breach of contract against the Wisconsin Departments of Workforce Development and Administration. As required, WRI also itemizes below its claim for damages in the amount of \$129,693.02.

### INTRODUCTION

Wisconsin contract law does not permit a tenant to break its lease without making the landlord whole. In spite of this core principle, that is exactly what the State of Wisconsin seeks to do. In this case, the State desired to make use of office space in River Falls, Wisconsin. It dictated the terms of that lease, including the amount of space to be leased, the duration of the lease, and the amount rent to be paid. However, rather than entering into a direct relationship with the landlord, the State induced its partner, WRI, to enter into a master lease agreement for the benefit of the State. It did so by providing both written and oral commitments that it would subsequently execute a sublease. Two years later the State breached that five-year sublease agreement, leaving WRI with three years remaining on the master lease. WRI now seeks to recover its damages that result from the State's breach.

For more than 25 years WRI has been a partner with the State of Wisconsin for the purpose of operating employment programs in western Wisconsin. In 2004, the Wisconsin Department of Workforce Development ("DWD") desired to consolidate two of its offices into a single location. DWD, in conjunction with WRI and other regional partners, selected a location in the vicinity of River Falls. Contrary to its historical practice with WRI, DWD proposed that WRI serve as the master lease holder and, in turn, sublet space to DWD. Given the extended history of working with DWD, and a belief that the State would conduct itself in good faith as required by law, WRI agreed to fill this role.

Negotiations subsequently commenced with the landlord in which WRI arranged for an amount of space specified by DWD, to be built-out in accordance to the requirements of DWD, at a price agreed upon by DWD, for a duration of time agreed upon by DWD. Said another way, the terms of the master lease were dictated by the requirements and needs of the State. More specifically, the State requested 1925 square feet of space, and agreed to pay for this space at an annual rate of \$17 per square foot (consisting of a base rate of \$14.50 per square foot, plus the amortized cost of the original build-out at \$2.50 per square foot), common area maintenance costs, and an amortized cost of a second build-out. Further, the State of Wisconsin Department of Administration ("DOA") provided the template and language used to draft the written lease.

Prior to executing the master lease, WRI twice requested that the State provide a written commitment of its intent to enter into a sublease following execution of the master lease. Although the agencies never provided a formal letter of intent, DWD and DOA employees explicitly informed WRI that the State's commitment was "rock solid." With these reassurances, WRI executed the master lease in September 2006, and DWD subsequently occupied the premise that same month. Over the course of the next year WRI negotiated a written sublease with the State. The sublease language was finally approved by both parties in August 2007; however, the DWD admittedly "neglected" to take action upon the documents until May 2008 and never provided them to WRI.

Nevertheless, during the entire period all parties operated under the agreed upon terms of the un-signed sublease. That is, WRI provided the amount of space requested by DWD at the facility located in River Falls. In exchange, the State paid rent as it would have under the sublease. For a period of approximately two years the parties performed their respective obligations in accordance with the terms of the sublease agreement -- terms dictated by the State

-- with the signature on the document as the only thing missing from the agreement.

In June 2008, citing budget constraints, the DWD decided to vacate the River Falls facility prior to the end of its five-year sublease. While the sublease would have permitted the State to lawfully break its lease in the event of a lack of funding, this escape was unavailable as both federal and state funding for the programs operating from the River Falls facility had increased in program year ("PY") 2008. The State alternatively asserted that the sublease agreement was not binding because it lacked a signature on the final documents; thus, the State alleged it had a month-to-month tenancy at the River Falls facility. This allegation is contrary to Wisconsin statutory and contract law. Consequently, the State is liable to WRI for damages caused by its breach of the sublease.

#### FACTUAL BACKGROUND

##### **A. THE HISTORICAL PARTNERSHIP BETWEEN WRI AND THE STATE OF WISCONSIN**

1. Claimant, WRI (and its predecessor organization the West Central Wisconsin Private Industry Council, Inc.) has a relationship with the DWD (and its predecessor, the Department of Industry and Human Relations) extending back to 1983. Currently, WRI is the administrative agent for the West Central Wisconsin Workforce Development Board ("WDB") and West Central Wisconsin County Boards' Consortium ("Consortium") under the federal Workforce Investment Act ("WIA") of 1998 (Public Law 105-220).

2. As the administrative agent, WRI is the recipient of federal funding that is, by legislative formula, distributed to WRI to administer on behalf of the WDB and Consortium. Periodically, WRI may also be the recipient of other funds it procures on a competitive or discretionary basis from the DWD. Section 121 of the federal WIA requires the WDB to establish and provide policy guidance and oversight for a system of One-Stop Career Centers

(referred to in Wisconsin as Job Centers) within its nine county service region. The WDB and Consortium have identified WRI as the lead agency to provide for day-to-day administration of this Job Center system in west central Wisconsin.

1. Under the WIA, programs directly administered by DWD, including those of the Wisconsin Job Service and Wisconsin Division of Vocational Rehabilitation ("DVR"), are federally mandated partners in the resultant Job Center system. These federally mandated partners are required to enter into Memoranda of Understanding with the WDB and Consortium, which shall:

- a. make available to participants, through the one-stop delivery system, the services that are applicable to those agencies from a list of services outlined under the Act, and
- b. participate in the operation of such system consistent with the terms of the memoranda described above.

2. In the course of carrying out its Job Center administrative responsibilities under the Workforce Investment Act, WRI has historically borne the responsibility for securing space for the Job Center locations throughout west central Wisconsin at the behest and on behalf of the Wisconsin Job Service and DVR.

#### **B. COOPERATIVE DEVELOPMENT OF THE RICE LAKE FACILITY**

3. Since partnering with the DWD in 1999, WRI has assisted DWD and other partners in operating various Job Centers and Department of Vocational Rehabilitation ("DVR") facilities in west-central Wisconsin. In 2004, DWD determined that it desired to consolidate several such facilities into a single location in vicinity of Rice Lake, Wisconsin. As the lease for one of its current locations was scheduled to expire on August 31, 2005, DWD was particularly determined to locate a new space in a very short period of time.

4. DWD spearheaded the search for a new facility throughout 2004 and 2005. In or around December, 2004, DWD issued a Request for Proposals ("RFP") to the public for the development of a facility in Rice Lake (the "Rice Lake Facility"). The RFP closed on January 19, 2005, and although four responses were received, none met the approval of either DWD or its partners.

5. Independent of the RFP process, DWD and its partners discovered a desirable property that formerly housed of a grocery store in the Rice Lake area (the "Towne Centre" property). DWD asserted, however, that because the owner of the Towne Centre property had not participated in the RFP process DWD would be precluded from acting as the master lease holder. To induce one of its partners to fill this role, in an email dated January 28, 2005, DWD Leasing Specialist Kevin Reid-Rice represented that:

- a. DWD had already completed most, if not all, of the floor plan and specifications for the Job Center, which the potential master lease holder could use to bargain with the building's owner;
- b. The owner had already given a verbal quote of \$12.50 per square foot; however, that price was negotiable based upon any changes DWD desired to make to the space;
- c. DWD and DOA would provide a template to be used for the master lease; and,
- d. DWD would then enter into a sublease agreement with the master lease holder, and DWD would draft the language for the sublease.

(See 1/28/05 Reid-Rice Email, attached hereto as Exhibit A.) In short, even though it would no longer hold the lead position in name, the DWD would retain control over negotiation of the master lease, craft the structure of the relationships of all the parties involved, and set the terms of the final lease and sublease documents. The only thing it could not do was sign the master lease.

6. Although the process was unusual, WRI believed that DWD would act in good faith. On February 10, 2005, in an effort to ensure the project continued to move forward, WRI agreed to assume the role of master lease holder. (See 2/10/05 Lindbo Email, attached hereto as Exhibit B.) Per the demand of the DWD and DOA, WRI used the master lease agreement drafted by the State, which WRI then executed with the owners of Towne Centre. DWD and DOA were consulted on all amendments to the State's draft master lease. Under the master lease, WRI became committed to a five year term, beginning on December 1, 2005 and terminating on November 30, 2010. The cost to the master lease holder would be \$75,764.70 per year to be paid in monthly installments of \$6,313.73.

7. On September 27, 2005, prior to executing the master lease, WRI informed DWD and DOA that it would be required to execute a master lease with the landlord before build out of the Rice Lake Job Center could proceed. Accordingly, WRI provided subleases to DWD and informed it that it would execute the master lease "upon receipt of sub lease commitments" from the State. (See 9/27/05 Best Email, attached hereto as Exhibit C.) In doing so, it proposed to utilize the very sublease template provided by DWD. (See 9/26/05 Draft Sublease, attached hereto as Exhibit D.) DWD refused to execute the sublease or provide any formal "sub lease commitment;" however, it provided informal assurances to WRI that upon execution of the master lease DWD would enter into a written sublease for the previously agreed upon space at the previously agreed upon amount for the previously agreed upon duration.

8. Based upon this agreement with the State, and in reliance upon the representations and warranties made to it by DWD employees, WRI executed the master lease.

9. Following the execution of the master lease, WRI coordinated the build-out of the facility, according to the DWD's required specifications. DWD occupied the premises as of

October 1, 2005. DWD also began making its monthly payments of \$3,145 in accordance with the terms to which it had agreed. After substantial negotiations between the parties, a sublease was approved and executed by WRI. (See McGrath Email to Howard Bernstein, attached hereto as Exhibit E.)

**C. DEVELOPMENT OF THE RIVER FALLS FACILITY**

10. Shortly after WRI agreed to become the master lease holder for the Rice Lake facility, DWD also requested that it do the same in regard to a new proposed St. Croix Valley Job Center to be located in River Falls, Wisconsin (the "River Falls Facility"). In reliance upon the perceived good faith of DWD, DOA, and other agents of the State of Wisconsin, WRI entered into an agreement for the development of the River Falls Facility that was similar to the arrangement the parties had for the Rice Lake Facility.

11. As was the case in Rice Lake, when creating the master lease for the River Falls Facility, DWD dictated the terms of the master lease agreement, the terms of the sublease agreement, and provided the template language for both. Ultimately, the master lease for the River Falls Facility committed WRI to pay \$67,143.96 per year for five years in monthly installments of \$5,595.33. (See River Falls Facility Master Lease, attached hereto as Exhibit F.)

12. On May 3, 2006, prior to executing the master lease, WRI requested DWD and DOA provide "a firm commitment through a letter of intent to lease" to enter into a written sublease upon previously agreed upon terms. (See 5/3/06 Best Email, attached hereto as Exhibit G.) DWD never provided the requested letter of intent. (See 5/4/06 Rosner Email, attached hereto as Exhibit H.)

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<sup>1</sup> Exhibit E appears undated, as produced by DWD to WRI pursuant to an open records request.



13. On July 20, 2006, WRI requested DWD execute a "letter of commitment" reflecting the State's agreement to enter into the written sublease for the previously agreed upon terms, following WRI's execution of the master lease. (See 7/20/06 Best Email, attached hereto as Exhibit I.) The State again refused to execute the requested letter of commitment, but informed WRI that the State had made a "rock solid commitment" in regard to the terms of the sublease agreement. (See 7/24/06 Reid-Rice Email, attached hereto as Exhibit J.) These terms included rental of 1,925 square feet of space for five years, consisting of 696 square feet of dedicated space, plus a percentage interest in common space equal to 1229 square feet. Additionally, the State agreed to pay for this space at an annual rate of \$17 per square foot (consisting of a base rate of \$14.50 per square foot and the amortized cost of the original build-out at \$2.50 per square foot), common area maintenance costs, and an amortized cost of a second build-out.<sup>2</sup> (See 5/3/06 Best Email, attached hereto as Exhibit G and 6/1/06 Best Email, attached hereto as Exhibit K.) Under this formula, the total rent to be paid by the State, frozen at the 2008 rate for common area maintenance, was \$3,265.76 per month. (See Explanatory Spreadsheet, attached hereto as Exhibit L.)

14. Based upon this agreement by DWD and DOA, and in reliance upon their representations, WRI executed the master lease for the River Falls Facility on September 5, 2006. (See River Falls Facility Master Lease, attached hereto as Exhibit F.) WRI subsequently coordinated the build-out of the River Falls Facility according to the DWD's required specifications. Thereafter, DWD occupied the premises and began to make regular payments accordingly.

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<sup>2</sup> Per agreement with the State, the \$7,500 cost for the second build-out was amortized over the five years of the lease at a rate of 8%, to be charged to DWD for a monthly rate of \$152.07. Common area maintenance costs, if frozen at the 2008 rate, constituted \$2.41 per square foot.

**D. THE STATE OF WISCONSIN'S REFUSAL TO SIGN WRITTEN SUBLEASE IN VIOLATION OF ITS "ROCK SOLID COMMITMENT"**

15. Following DWD's occupancy of the River Falls facility, WRI repeatedly requested that DWD execute a written sublease agreement. Using the template drafted by the State, WRI submitted multiple sublease agreements to DWD and DOA for signature. (See Original Sublease Draft (using State Template), attached hereto as Exhibit M.) However, Ellen Rosner of the DOA State Facilities Division, Leasing and Space Management Section asserted that the sublease could not be signed by the State because, among other things, WRI had used the incorrect template to draft the sublease language. (See 10/13/06 Rosner Email, attached hereto as Exhibit N.) Additionally, as later conceded by DWD, the template provided to and used by WRI had been used by DWD to establish leasing relationships at more than 600 other facilities around the state. (See 2/26/07 Reid-Rice Email, attached hereto as Exhibit O.) Nevertheless, Rosner stated that she would re-draft the document in the appropriate format the following week and forward it to WRI for review. (See 10/13/06 Rosner Email, attached hereto as Exhibit N.)

16. Rosner subsequently re-drafted the sublease into the alternative format, and the parties worked to revise Rosner's draft in the ensuing months. (See 10/24/06 Sublease Draft, attached hereto as Exhibit P; 1/16/07 Sublease Draft, attached hereto as Exhibit Q; 3/16/07 Sublease Draft, attached hereto as Exhibit R; 6/29/07 Sublease Draft, attached hereto as Exhibit S; 7/25/07 Sublease Draft, attached hereto as Exhibit T; 7/31/07 Sublease Draft, attached hereto as Exhibit V; and 8/22/07 Sublease Draft, attached hereto as Exhibit U.)

17. WRI and DWD ultimately reached an agreement on the final terms of the lease, which DWD submitted to DOA for final approval. DOA provided this final approval on August 29, 2007. (See 5/8/08 and 6/6/08 Rosner Emails, attached hereto as Exhibit W and X.) DWD employee Ellen Rosner contacted WRI on September 26, 2007, and informed it that the sublease

language had been approved. (See 6/6/08 Rosner Email, attached hereto as Exhibit X.) However, following this conversation, Rosner concedes that she "neglected" to perform any further work to complete the written sublease documents, and that the "files lay on her desk until May 2008." (See 6/6/08 Rosner Email, attached hereto as Exhibit X.)

18. In spite of the State's failure to sign the written sublease document, WRI honored all of its obligations under the contractual agreement. Similarly, for approximately two years of the five year term of the sublease, DWD performed its obligations in accordance with the terms of the contractual agreement.

**E. BREACH OF THE SUBLEASE AGREEMENT BY THE STATE OF WISCONSIN**

19. When it began to make rental payments the State refused to pay the full amount to which it had previously agreed. DWD argued that it no longer intended to use 200 square feet of the space it agreed to lease, and therefore its payments should accordingly be reduced to \$2843.86. (See 8/1/07 Reid-Rice Email, attached hereto as Exhibit Y.) WRI disagreed with DWD's unilateral alteration of the sublease terms and insisted that DWD fulfill its previously agreed to obligations. (See 2/26/07 Lindbo Email, attached hereto as Exhibit Z.) Ultimately, DWD finally conceded that it was liable for payments for the full space it had agreed to sublease from WRI. (See 2/26/07 Reid-Rice Email, attached hereto as Exhibit Z.) In spite of this explicit agreement, the State never increased its monthly payments or compensated WRI for the previously underpayments of rent owed.

20. In an email dated May 21, 2008, DWD Facilities Management Section Chief Margaret M. McGrath notified WRI that DWD Secretary Roberta Gassman was reviewing DWD leases and subleases in Wisconsin for the purpose of consolidating facilities. (See 5/21/08

McGrath Email, attached hereto as Exhibit AA.<sup>3</sup>) At some time following May 21, 2008, but preceding June 27, 2008, Secretary Gassman determined that DWD would vacate the River Falls Facility effective July 31, 2008. DWD informed DOA of Secretary Gassman's decision, causing DOA to subsequently determine that it would cease making rental payments to WRI.

21. In letters dated June 27 and 30, 2008, DWD Leasing Specialist Dan Smith purported to provide notice to WRI that DWD intended to terminate the sublease agreement. (See 6/27/08 and 6/30/08 Smith Letters, attached hereto as Exhibits BB and CC.) In his letters, Mr. Smith further stated that DWD would no longer participate in any written or oral operating agreements relating to the River Falls Facility. Further, in a letter dated June 27, 2008, DOA Leasing Officer Jane Zavoral also notified WRI that DWD intended to terminate its occupancy of the River Falls facility effective July 31, 2008. (See 6/30/08 Zavoral Letter, attached hereto as Exhibit DD.)

22. In her letter, Zavoral stated that DWD was terminating its occupancy "[d]ue to budget restraints." (See 6/30/08 Zavoral Letter, attached hereto as Exhibit DD.) Pursuant to Article VIII, Section 4 of the Wisconsin Constitution, DWD would have been permitted to break its five year commitment under the Sublease in the event that funds became unavailable. (See e.g. 8/22/07 Sublease Draft, ¶ 14, attached hereto as Exhibit V.) Contrary to this assertion, funding from both federal and state sources for the programs housed by the River Falls Facility had actually increased in the year 2008. (See US DOL ETA PY 2008 Workforce Investment Act ("WIA") Allotments and Additional Funds, Notice, Fed. Reg. Vol. 73, No. 67, April 7, 2008, attached hereto as Exhibit EE; and 4/18/08 DWD Memo Series Notice, attached hereto as

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<sup>3</sup> Portions of Exhibit AA have been redacted by DOA.

Exhibit FF.) In the absence of a decrease in funding, the State was not permitted to break its sublease.

23. Nevertheless, on July 31, 2008, DWD ceased occupying the building. Accordingly, DOA ceased paying rent and WRI has received no rent payment from the State for the River Falls facility since July 1, 2008. The first missed rent payment by DOA was due August 1, 2008, and DOA has failed to make any further payments.

#### LEGAL ANALYSIS OF CLAIM

24. Under Wisconsin law, a lease agreement (or in this case a sublease agreement) may be enforceable even if it is missing the signatures of the parties "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." Wis. Stat. § 706.04. The Wisconsin Court of Appeals has explicitly held that the "failure to execute a document can be cured by *sec. 706.04, Stats.*" *Security Pacific National Bank v. Ginkowski*, 140 Wis. 2d 332, 335, 410 N.W.2d 589 (1987); *see also Nelson v. Albrechtson*, 93 Wis. 2d 552, 561, 287 N.W.2d 811 (1980) (the lack of signatures is a "formal defect that can be cured by application of *sec. 706.04, Stats.*"). Specifically, the courts have determined that "[p]art performance . . . is a basis for satisfying the statute of frauds applicable to land conveyances, *including rental of land for a period longer than a year.*" *Halverson v. River Falls Youth Hockey Assoc.*, 226 Wis. 2d 105, 113, 593 N.W.2d 895 (1999) (quoting *Rossow Oil Co. v. Heiman*, 72 Wis. 2d 696, 709, 242 N.W.2d 176 (1976)) (emphasis in original).

25. The agreement between WRI on one side, and DOA and DWD on the other, constitutes a binding and enforceable contract under Wisconsin law. Specifically, DWD requested that WRI hold the master lease for a specific amount of space, at a location specified

by DWD, to be subleased to DWD at a specified rate. Further, the State required WRI to build out the space in a manner specific to DWD's requirements, thus rendering it useful to DWD's particular purposes. WRI assented to this request, and became obligated to the master lease under the terms specified and required by DWD.

26. DWD performed under the contractual agreement insofar as it occupied and paid for space at the River Falls Facility for approximately two of the five years for which it was obligated prior to breaching its obligations. Further, as discussed above, DWD concedes that all material terms of the sublease have been agreed upon by the parties. Therefore, the only element missing from the sublease is the signatures of the parties. Pursuant to Wis. Stat. § 706.04, the sublease may be reformed in accordance with the statute to supply the missing signatures.

27. DWD and DOA have breached the sublease by vacating the River Falls Facility and refusing to make further payment in accordance with their obligations under the sublease agreement. As a result of the breach, WRI has been damaged in an amount equal to the remaining payments owed on the five year term of the lease. This amount can be readily fixed and made definite by multiplying the amount of square footage to which DWD is obligated, by the rate it agreed to pay, and again by the number of months remaining until the contract's expiration.

28. In the time following the State's breach, WRI has attempted to mitigate its damages, but has been unable to secure new tenants.

#### **ITEMIZATION OF DAMAGES RESULTING FROM BREACH**

29. At the time of its breach, thirty-seven months remained of the five-year term of the sublease agreement (five months -- August through December -- in 2008, twelve months in

2009 and 2010, and eight months in 2011 -- January through August). As a result, WRI has been injured in an amount equal to \$120,833.12.

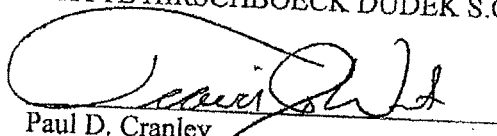
30. WRI has further been damaged as the State of Wisconsin has withheld payments for which it agrees DWD was obligated. For twenty-one months, from September 1, 2006, through July 1, 2008, DWD made rental payments to WRI in the amount of \$2843.86, which was \$421.90 less than the \$3,265.76 owed under its sublease agreement. As discussed above, DWD concedes that it would be liable for the full amount space leased until such time as an amended sublease could be negotiated after execution of the original sublease. The parties never negotiated an amended sublease agreement. As a consequence, WRI has been damaged by the State's breach in an amount equal to \$8,859.90.

#### CONCLUSION

For the reasons discussed above, Wisconsin Resource, Inc. respectfully requests that the State of Wisconsin Claims Board grant its claim for damages resulting from the State of Wisconsin's breach in the amount of \$129,693.02.

Dated this 3<sup>rd</sup> day of August, 2009.

WHYTE HIRSCHBOECK DUDEK S.C.



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State Bar No. 1052340  
Attorneys for Workforce Resource, Inc.

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Facsimile: (608) 258-7138  
twest@whdlaw.com



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-2231/1

JTK.../...

nwn

MW 7/11

~~PRELIMINARY DRAFT NOT READY FOR INTRODUCTION~~

AA

Gen.

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AN ACT ...; relating to: expenditure of \$129,693.02 from the general fund in payment of a claim against the state made by Workforce Resource, Inc.

**Analysis by the Legislative Reference Bureau**

This bill directs expenditure of \$129,693.02 from the general fund in payment of a claim against the Department of Workforce Development (DWD) and the Department of Administration (DOA) by Workforce Development, Inc. The claimant asserts that, at the behest of DWD, it executed a master lease agreement with a third party for a facility in the city of River Falls to be occupied by DWD in 2006 and made modifications to the facility to meet DWD's specifications. DWD then occupied the modified space in the facility for use as a state job center. The claimant attempted to negotiate and execute a written sublease with DWD for the occupied space but was unsuccessful. DWD made rental payments to the claimant on a month-to-month basis during its occupancy and then vacated the premises in June 2008. The claimant asserts that there was an unsigned lease agreement between the claimant and the state, as represented by DWD and DOA. Although certain formal requisites are necessary under Wisconsin law for a lease agreement to be enforceable, s. 706.04 provides that if all of the elements of a transaction are clearly and satisfactorily proved, the transaction may be enforceable under certain conditions by a court using its equitable powers. DWD and DOA assert that since under state law DWD has no authority to lease property without the approval of DOA, any implicit agreement by DWD is not enforceable against the state. They also assert that there was a disagreement between the claimant and the state over the rental amount and the claimant's acceptance of a reduced amount on a month-to-month basis constitutes

stats



acceptance of the state's position concerning the rental amount. The claimant claimed \$129,693.02, based upon underpayment of rental payments by the state during its occupancy of the facility and full rental payments for the remainder of the term of occupancy (August 31, 2011), because the modified space was not readily rentable to another tenant and therefore remained vacant after DWD terminated its occupancy. This claim was presented to the claims board in the amount of \$120,833.12 and was denied (see 2009 *Senate Journal*, p. 817).

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

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

1           **SECTION 1. Claim against the state.** (1) There is directed to be expended from  
 2 the appropriation under section 20.505 (4) (d) of the statutes, as affected by the acts  
 3 of 2011, \$129,693.02 in payment of a claim against the state made by Workforce  
 4 Resources, Inc., Menomonie, Wisconsin as reimbursement for expenses incurred  
 5 during the period from 2006 to 2011 in modifying a facility in the city of River Falls  
 6 for occupancy by the Department of Workforce Development, which the department  
 7 occupied for 21 months, and in absorbing the costs of vacant space intended for use  
 8 by the department during the term of a 5-year unsigned sublease. The claimant  
 9 asserts that it incurred costs based upon assurances of occupancy and payment of  
 10 certain costs by the department and is equitably entitled to payment. Acceptance of  
 11 this payment releases this state and its officers, employees, and agents from any  
 12 further liability resulting from express or implied agreements to modify or occupy  
 13 this facility or to make any rental payments during the period ending on August 31,  
 14 2011.

(END)

**Kuesel, Jeffery**

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**To:** Woebke, Matt  
**Subject:** RE: LRB-2231 - Workforce Resource claim bill

Matt,  
I will take care of the changes. You should have the redraft shortly.

Jeff Kuesel

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**From:** Woebke, Matt  
**Sent:** Wednesday, August 31, 2011 2:26 PM  
**To:** Kuesel, Jeffery  
**Subject:** RE: LRB-2231 - Workforce Resource claim bill

Hi Jeff,

Could you make the following changes to LRB-2231 for us and resend for us to jacket:

The reference in the first paragraph of the Legislative Reference Bureau Analysis should read "Workforce Resource, Inc." not Workforce Development Inc.. and on page 2 Section 1 Claim Against the State line 4, should state Workforce Resource, Inc. not Workforce Resources, Inc.

Thanks!  
Matt

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**From:** Kuesel, Jeffery  
**Sent:** Tuesday, July 19, 2011 12:34 PM  
**To:** Woebke, Matt  
**Subject:** RE: LRB-2231 - Workforce Resource claim bill

Matt,  
This draft has been completed. I am asking our main desk to E-mail you a copy. Possibly the first submittal did not go through. If so, we're sorry about the snafu. Let me know if you have any question about the draft.

**Jeffery T. Kuesel**  
**Wisconsin Legislative Reference Bureau**  
**P.O. Box 2037**  
**Madison, WI 53701-2037**  
**(608) 266-6778**  
**Jeffery.Kuesel@legis.wisconsin.gov**

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**From:** Woebke, Matt  
**Sent:** Tuesday, July 19, 2011 10:03 AM  
**To:** Kuesel, Jeffery  
**Subject:** LRB-2231 - Workforce Resource claim bill

Hi Jeff,

I'm checking in on the Workforce Resource claim bill. Would it be possible to get a draft of that this week?

Thanks,

Matt Woebke  
Office of Sen. Sheila Harsdorf



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-2231/1

JTK:nwn:rs

Stays

Thurs. early a.m.

2011 BILL

Page 11

- 1 AN ACT relating to: expenditure of \$129,693.02 from the general fund in
- 2 payment of a claim against the state made by Workforce Resource, Inc.

*Analysis by the Legislative Reference Bureau*

Resource

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This bill directs expenditure of \$129,693.02 from the general fund in payment of a claim against the Department of Workforce Development (DWD) and the Department of Administration (DOA) by Workforce ~~Development~~, Inc. The claimant asserts that, at the behest of DWD, it executed a master lease agreement with a third party for a facility in the city of River Falls to be occupied by DWD in 2006 and made modifications to the facility to meet DWD's specifications. DWD then occupied the modified space in the facility for use as a state job center. The claimant attempted to negotiate and execute a written sublease with DWD for the occupied space but was unsuccessful. DWD made rental payments to the claimant on a month-to-month basis during its occupancy and then vacated the premises in June 2008. The claimant asserts that there was an unsigned lease agreement between the claimant and the state, as represented by DWD and DOA. Although certain formal requisites are necessary under Wisconsin law for a lease agreement to be enforceable, s. 706.04, stats., provides that if all of the elements of a transaction are clearly and satisfactorily proved, the transaction may be enforceable under certain conditions by a court using its equitable powers. DWD and DOA assert that since under state law DWD has no authority to lease property without the approval of DOA, any implicit agreement by DWD is not enforceable against the state. They also assert that there was a disagreement between the claimant and the state over the rental amount and the claimant's acceptance of a reduced amount on a month-to-month basis



**Barman, Mike**

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**From:** on behalf of LRB.Legal  
**To:** Wuebke, Matt  
**Subject:** RE: Draft Review: LRB 11-2231/2 Topic: Workforce Resource claim

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**From:** Wuebke, Matt  
**Sent:** Friday, September 02, 2011 9:14 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 11-2231/2 Topic: Workforce Resource claim

Please Jacket LRB 11-2231/2 for the SENATE.