

### Fiscal Estimate - 2011 Session

Original     
  Updated     
  Corrected     
  Supplemental

<b>LRB Number</b> <b>11-2231/2</b>	<b>Introduction Number</b> <b>SB-188</b>
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**Description**  
 Expenditure of \$129,693.02 from the general fund in payment of a claim against the state made by Workforce Resource, Inc

**Fiscal Effect**

**State:**

<input type="checkbox"/> No State Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget
<input type="checkbox"/> Indeterminate	<input checked="" type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<input type="checkbox"/> Increase Existing Appropriations		<input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Decrease Existing Appropriations		
<input type="checkbox"/> Create New Appropriations		

**Local:**

<input type="checkbox"/> No Local Government Costs			
<input type="checkbox"/> Indeterminate			
1. <input type="checkbox"/> Increase Costs	3. <input type="checkbox"/> Increase Revenue	5. Types of Local Government Units Affected	
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory		<input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities
2. <input type="checkbox"/> Decrease Costs	4. <input type="checkbox"/> Decrease Revenue		<input type="checkbox"/> Counties <input type="checkbox"/> Others
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory		<input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts

<b>Fund Sources Affected</b>	<b>Affected Ch. 20 Appropriations</b>
<input checked="" type="checkbox"/> GPR <input checked="" type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS	20.445(1) - GPR, 20.445(5) - GPR, and 20.445(5) - PR-F

<b>Agency/Prepared By</b> DWD/ Scott McDonald (608) 267-6731	<b>Authorized Signature</b> Georgia Maxwell (608) 266-2284	<b>Date</b> 9/26/2011
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## Fiscal Estimate Narratives

DWD 9/26/2011

LRB Number 11-2231/2	Introduction Number SB-188	Estimate Type Original
<b>Description</b> Expenditure of \$129,693.02 from the general fund in payment of a claim against the state made by Workforce Resource, Inc		

### Assumptions Used in Arriving at Fiscal Estimate

The Department of Workforce Development (DWD) continues to dispute the claim made by Workforce Resources, Inc. This issue has already been resolved through the State Claims Board in favor of DWD. DWD's evaluation is that the claim is without merit and should not be paid.

DWD is completing this fiscal estimate at the request of LRB.

Assumptions used in arriving at Fiscal Estimate:

- Payment claim, if awarded, would be taken out of the Department's existing general GPR funds. No new GPR would be allocated to DWD for this claim.
- Per federal OMB regulations OMB A-87 Attachment B - Item 16 - Fines and Penalties -Federal funds can not be used for the payment of fines, penalties, damages, and other settlements. Therefore, this payment would need to be taken out of the department's existing GPR allocation.
- The payment claim will result in a net zero cost effect however, this is due to the offsetting cost for the payment of the claim and the reduction in DWD service costs in order to pay the claim out of existing departmental GPR funds
- Given that existing departmental GPR would be used, the cost of this payment of claim could not be absorbed by the department without severe program cuts.
- Payment claim could impact the amount of federal dollars that could be captured by the department under the Vocational Rehabilitation program. The federal decrease in revenue could be as much as \$479,194.40 at the matching rate of 78.7% federal to 21.3% state match. This would have an impact on services to persons with disabilities.
- Assuming an hourly rate of \$17.041, this could require the reduction of 3.66 FTE within a GPR authorized fund account in order to provide payment for this claim.
- This could result in a 17% funding reduction for the Division of Employment and Training's administration of the Youth Apprenticeship program.
- This could result in a reduction to funding for the Division of Equal Rights.

### Long-Range Fiscal Implications

Assuming that existing departmental GPR would be used, the cost of this payment of claim could not be absorbed by the department without severe program cuts to Employment and Training, Vocational Rehabilitation, or Equal Rights. This reduction of services would occur at a time when residents of the state are requesting more services to assist them in obtaining employment.

Jim Doyle  
Governor

Roberta Gassman  
Secretary



State of Wisconsin  
Department of Workforce Development

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December 4, 2009

**BEFORE THE WISCONSIN CLAIMS BOARD**

**Response of the Department of Workforce Development  
to the Claim of Workforce Resource Inc. (WRI)**

**2009 – 033 – DWD/DOA**

**Introduction**

Claimant Workforce Resource Inc. (WRI) is an organization which operates employment and training programs in West Central Wisconsin which are funded by grants under the federal Workforce Investment Act (WIA) and the federal Temporary Assistance to Needy Families Act (TANF). It receives funding for these programs from the Department of Workforce Development (DWD) and the Department of Children and Families (DCF).

Aside from these programs, WRI also has subleased office space to DWD for DWD's operation of other state programs, such as Job Service and Vocational Rehabilitation, via subleases or other tenancy arrangements approved by the Department of Administration (DOA). One of these arrangements forms the basis for this claim before the Board. As discussed in more detail below, WRI has presented a claim for "breach of contract" damages in the amount of \$129,693.02. DWD's evaluation is that the claim is without merit and should not be paid.

### **WRI's Claim**

WRI's claim, in essence, is that there was an unsigned agreement between WRI and DOA/DWD under which WRI, as a tenant of office space in River Falls, Wisconsin, entered into a five year sublease agreement, beginning in September 2006, to provide office space to DWD. WRI acknowledges that no sublease document was ever signed by DWD or DOA, but maintains that the agencies are or should be bound by the terms of an unsigned sublease agreement. WRI alleges that it was persuaded by "the State" to enter into a master lease with a private landlord by "the State's" commitment that it would sign a sublease.

According to the claim, DOA/DWD breached the unsigned agreement when DWD vacated the River Falls premises in June 2008 and ceased paying WRI \$2843.86 per month. The claim asserts that WRI is owed \$8859.90, or \$421.90 per month, for the period from September 2006 through June 2008, because WRI states that the State should have been making monthly payments of \$3265.76.

WRI also claims \$120,833.12 for monthly payments of \$3265.76 for the vacated premises under the unsigned sublease from July 2008 through August 2011.

### **DWD's Response**

As an initial point, DWD's response is that DWD is not authorized to lease property of this type or for these purposes without the participation and signed approval of DOA. Under any state of facts, there is no basis for a claim against DWD because, like most other state agencies, DWD did not and does not have the authority to buy or

rent real property. That is one of the functions of DOA. (There are some exceptions to this rule, but they do not apply to the programs involved in this claim.)

There is also no basis for a claim against DOA. DWD denies that any "inducement" took place. Exhibit A to the Claim shows that in 2005 a DWD employee, Kevin Reid-Rice, presented information to Job Center "partner" agencies on possibilities for office space in Rice Lake – not River Falls – and stated that there were two options for proceeding: for one site, the partner agencies would each undertake separate leases, or, for the other site, "another partner would have to take the lead and DWD would have to sublet from them." WRI chose to take on the role of lead agency for the office space rentals in Rice Lake. The relevance of reciting these facts which relate to a building in Rice Lake, when the claim involves office space in River Falls, is not entirely clear to DWD, but the point is apparently that by negotiating a sublease in one location DWD, in WRI's view, was required to also agree to a sublease in the other location, despite the fact that there was never agreement on the terms of the sublease.

The WRI claim proceeds for many pages to present the details of lengthy discussions among DWD, DOA and WRI, which the claim alternately presents as both evidence that all of the terms of a River Falls sublease were agreed to by all of the parties and also evidence that DOA and DWD failed to abide by the terms of the unsigned agreement. DWD submits that the facts presented make it clear that there was never a full agreement among DOA, DWD and WRI on all of the terms of a sublease, and therefore it is not surprising that a sublease was never signed. DWD and

DOA never agreed to the higher rental rates requested by WRI, because those rates were based on an allocation of space that DWD did not need for its employees. DOA and DWD also did not agree to sublease provisions relating to insurance that were taken from the master lease signed by WRI.

DWD occupied the River Falls premises in September 2006 in the expectation that DOA and WRI would ultimately reach an agreement and would both sign an agreed-upon sublease. During the time that DWD occupied the River Falls premises without a signed sublease, DOA stated clearly to WRI that the State would pay WRI \$2843.86 per month on a month-to-month tenancy basis. WRI accepted the payments and took no action to remove DWD from the premises. DOA/DWD and WRI were therefore functioning under a valid month-to-month tenancy.

Responding to serious financial issues in 2008, DWD reduced its staffing and use of offices throughout the state. DOA gave 30 days written notice to WRI of the termination of the River Falls tenancy effective July 30, 2008. The obligation to pay rent under the month-to-month tenancy therefore ended at that time.

DOA/DWD does not owe the \$8859.90 claimed by WRI for the difference between the claimed rent of \$3265.76 per month and the paid rent of \$2843.86 per month for the period of September 2006 through July 2008. There was never any actual agreement or signed agreement for the payment of the amount claimed by WRI.

DOA/DWD does not owe the \$120,833.12 claimed by WRI for the months that have elapsed since the termination of the month-to-month tenancy. There has been no basis for the payment of rent since DOA gave notice of the termination of the month-to-month tenancy and DWD vacated the premises. In addition, the period for which WRI is claiming rent includes time in the future, for which there can clearly be no obligation to pay rent.

Another reason to deny this claim is that WRI's arguments contradict and cannot control over the statute which applies to leases for a period of longer than a year, which requires that, to be valid, such an agreement must be in writing and must be signed by the parties:

A lease for more than a year, or a contract to make such a lease, is not enforceable unless it meets the requirements of s. 706.02 and in addition sets forth the amount of rent or other consideration, the time of commencement and expiration of the lease and a reasonably definite description of the premises, or unless a writing signed by the landlord and the tenant sets forth the amount of rent or other consideration, the duration of the lease and a reasonably definite description of the premises . . . . Sec. 704.03(1), Wis. Stats.

The statutory definition of "periodic tenant" is fully consistent with the unsigned arrangement under which DWD occupied the premises and DOA paid rent on a monthly basis, and WRI accepted the payments, until DOA gave 30 days written notice to terminate the tenancy:

"Periodic tenant" means a tenant who holds possession without a valid lease and pays rent on a periodic basis. It includes a tenant from day-to-day, week-to-week, month-to-month, year-to-year or other recurring interval of time, the period being determined by the intent of the parties under the circumstances, with the interval between rent-paying dates normally evidencing that intent. Sec. 704.01(2), Wis. Stats.

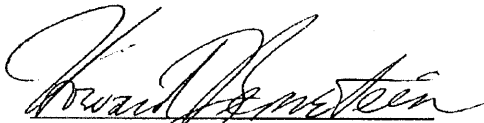
### Conclusion

For the reasons provided above, the Department of Workforce Development recommends that this claim be denied. DOA and DWD did not compel WRI to enter into a master lease for office facilities in River Falls and were unable to reach agreement with WRI on a sublease. In the absence of a sublease, DWD occupied the River Falls premises as a month-to-month tenant, and DOA provided the proper notice to terminate the month-to-month tenancy effective July 30, 2008.

I believe that a hearing on this claim is not necessary because the lack of a legal and factual basis for the claim is clear. If the Board decides to schedule this claim for a hearing, please send the notice to me as the DWD's representative.

I have enclosed the following exhibit:

**DWD – 1** Letter of June 27, 2008 from DOA Leasing Officer Jane Zavoral to Richard Best, Executive Officer, Workforce Resource, Inc.



Howard Bernstein, Legal Counsel  
Wisconsin Department of Workforce Development

cc: Paul D. Cranly and Travis James West  
Whyte Hirschboeck Dudek S.C.  
33 East Main Street, Suite 300  
Madison WI 53703

Susan Canty  
John Walker  
Margaret McGrath  
Atty Ernest Jones, DOA





WISCONSIN DEPARTMENT OF  
ADMINISTRATION

JIM DOYLE  
GOVERNOR

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Division of State Facilities  
Bureau of Operations Management  
P.O. Box 7866  
Madison, WI 53707-7866  
Voice (608) 266 2731 Fax (608) 267 0200  
TTY (608) 267 9629

June 27, 2008

Richard Best  
Executive Director  
Workforce Resource, Inc.  
401 Technology Drive  
Menomonie, WI, 54751

*Exb*  
*PWD-1*

CERTIFIED MAIL  
RETURN RECEIPT

Dear Mr. Best,

The State of Wisconsin, Department of Workforce Development is currently occupying space in the building at 625 Whitetail Boulevard in River Falls, WI.

Due to budget restraints, this letter will serve as your 30 day notice that the Department of Workforce Development will terminate their occupancy on or before July 31, 2008.

We wish to thank you for your cooperation and past rental arrangements.

If you have any questions, please contact me at (608) 266-5398 or the above address.

Sincerely,

Jane Zavoral  
Leasing Officer  
Division of State Facilities

## Fiscal Estimate Worksheet - 2011 Session

Detailed Estimate of Annual Fiscal Effect

Original
  Updated
  Corrected
  Supplemental

<b>LRB Number</b> <b>11-2231/2</b>	<b>Introduction Number</b> <b>SB-188</b>
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**Description**  
 Expenditure of \$129,693.02 from the general fund in payment of a claim against the state made by Workforce Resource, Inc

**I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**

The Department of Workforce Development (DWD) continues to dispute the claim made by Workforce Resources, Inc. This issue has already been resolved through the State Claims Board in favor of DWD. DWD's evaluation is that the claim is without merit and should not be paid. The worksheet shows a net zero cost effect however, this is due to the offsetting cost for the payment of the claim and the reduction in DWD service costs in order to pay the claim out of existing departmental GPR funds. Assuming that existing departmental GPR would be used, the cost of this payment of claim could not be absorbed by the department without severe program cuts to Employment and Training, Vocational Rehabilitation, or Equal Rights. This reduction of services would occur at a time when residents of the state are requesting more services to assist them in obtaining employment. Please see Fiscal Estimate Assumptions.

<b>II. Annualized Costs:</b>	<b>Annualized Fiscal Impact on funds from:</b>	
	Increased Costs	Decreased Costs

<b>A. State Costs by Category</b>		
	Increased Costs	Decreased Costs
State Operations - Salaries and Fringes	\$	\$-129,693
(FTE Position Changes)		(-3.7 FTE)
State Operations - Other Costs	129,693	
Local Assistance		
Aids to Individuals or Organizations		
<b>TOTAL State Costs by Category</b>	<b>\$129,693</b>	<b>\$-129,693</b>

<b>B. State Costs by Source of Funds</b>		
	Increased Costs	Decreased Costs
GPR	129,693	-129,693
FED		
PRO/PRS		
SEG/SEG-S		

<b>III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</b>		
	Increased Rev	Decreased Rev
GPR Taxes	\$	\$
GPR Earned		
FED		-479,194
PRO/PRS		
SEG/SEG-S		
<b>TOTAL State Revenues</b>	<b>\$</b>	<b>\$-479,194</b>

**NET ANNUALIZED FISCAL IMPACT**

	<u>State</u>	<u>Local</u>
NET CHANGE IN COSTS	\$0	\$
NET CHANGE IN REVENUE	\$-479,194	\$
<b>Agency/Prepared By</b>		
DWD/ Scott McDonald (608) 267-6731	<b>Authorized Signature</b>	
	Georgia Maxwell (608) 266-2284	<b>Date</b>
		9/26/2011