STATE OF WISCONSIN
Senate Journal
One-Hundred and First Regular Session

TUESDAY, January 22, 2013

The Chief Clerk makes the following entries dated **Friday, January 18, 2013.**

INTRODUCTION, FIRST READING, AND REFERENCE OF PROPOSALS

Read and referred:

Senate Joint Resolution 4

Relating to: creation of a department of transportation, creation of a transportation fund, and deposit of funds into the transportation fund (second consideration).

By Senators Petrowski, Carpenter, Lazich, Darling, Farrow, Gudex, Harsdorf, Kedzie, Lasee, Leibham, Moulton, Olsen and Schultz; cosponsored by Representatives Ripp, Kahl, Bernier, Bies, Brooks, Czaja, Danou, Doyle, Endsley, Honadel, Jacque, Jorgensen, Kaufert, Kerkman, Kestell, Klenke, LeMahieu, T. Larson, Marklein, Murphy, Mursau, Nerison, Nygren, A. Ott, Petersen, Petryk, Pridemore, Schraa, Smith, Spiros, Stone, Steineke, Strachota, Tauchen, Thiesfeldt, Tittl, Tranel, Weininger, Zepnick and August.

To committee on **Transportation, Public Safety, and Veterans and Military Affairs**

Read first time and referred:

Senate Bill 1

Relating to: regulation of ferrous metallic mining and related activities, procedures for obtaining approvals from the Department of Natural Resources for the construction of utility facilities, making an appropriation, and providing penalties.

By Senators Tiffany, Gudex, Darling, Farrow, Kedzie, Lasee, Lazich, Leibham and Vukmir; cosponsored by Representatives Suder, Honadel, Williams, August, Ballweg, Bernier, Bies, Born, Craig, Czaja, Endsley, Hutton, Jacque, Jagler, Kapenga, Kaufert, Kerkman, Kestell, Kleefisch, Klenke, Knodl, Knudson, Kooyenga, Kramer, Kuglitsch, T. Larson, LeMahieu, Loudenbeck, Murphy, Murtha, Nass, Nygren, A. Ott, J. Ott, Petersen, Petryk, Pridemore, Ripp, Sanfelippo, Schraa, Severson, Spiros, Steineke, Stone, Strachota, Stroebel, Swearingen, Tauchen, Thiesfeldt, Tittl, Vos, Weatherston and Weininger.

To committee on **Workforce Development, Forestry, Mining, and Revenue**

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

INTRODUCTION, FIRST READING, AND REFERENCE OF PROPOSALS

Read and referred:

Senate Joint Resolution 5

Relating to: fiscal estimate requirements for bills containing penalty provisions.

By Senators Taylor, T. Cullen, Risser, Carpenter, Lehman and Harris; cosponsored by Representatives Bies, Kahl, Hebl, Johnson, Pasch, Barnes, Kessler, Goyke, Berceau, C. Taylor, Bernard Schaber and Hintz.

To committee on **Government Operations, Public Works, and Telecommunications**

Read first time and referred:

Senate Bill 2

Relating to: the publication and effective dates of acts.

By Senator Grothman.

To committee on **Judiciary and Labor**

PETITIONS AND COMMUNICATIONS

State of Wisconsin
Claims Board

December 26, 2012

Enclosed is the report of the State Claims Board covering the claims heard on December 12, 2012. 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,
GREGORY D. MURRAY
Secretary

STATE OF WISCONSIN CLAIMS BOARD

The State of Wisconsin Claims Board conducted hearings at the State Capitol Building in Madison, Wisconsin, on December 12, 2012, upon the following claims:

Claimant	Agency	Amount
1 .Marion Lynette	Workforce Development	$80,000.00

2. William Damon Avery	Innocent Convict Compensation	$30,000.00
3. Forest Seaton Shomberg	Innocent Convict Compensation	$102,500.00
4. Beth Reeves	Innocent Convict Compensation	$161,894.72
5. David R. Turnpaugh	Innocent Convict Compensation	$28,201.20

The following claims were decided without hearings:

Claimant	Agency	Amount
6. Kelle & Brian Dorn	Health Services	$6,638.25
7. Thomas Barbian	Correction	$37.00
8. Trammel Starks	Corrections	$228.93
9. Antonio D. Johnson	Corrections	$168.00

The Board Finds:

1. Marion Lynette of Antigo, Wisconsin claims $80,000 for worker's compensation death benefits, lost hours towards pension earnings, and funeral costs for the claimant's father, Alvin Tillman. Mr. Tillman was working as a plumber at a jobsite in March 1973 when he collapsed and died. The claimant states that on the day of his death, her father was responsible for carrying 125 lb. sections of pipe and placing them in a ditch. She alleges that two weeks before his death, he told his wife that his supervisors were "trying to kill [him]." The claimant alleges that her father's physician stated that he did not have a pre-existing heart condition. Upon her father's death, his wife filed a claim for worker's compensation death benefits, however, the claim was denied on the grounds that the death was due to a pre-existing heart condition, which was not aggravated by the work Mr. Tillman was performing at the time of his death. The denial of benefits was affirmed by the Department of Labor Industry and Human Relations (DILHR) and again reviewed and denied by Dane County Circuit Court in 1975. The claimant states that she was unaware that the attorney she hired to pursue the worker's compensation claim had lost his license three times in the past. The claimant points to the fact that the physician who declared her father's death to be due to a heart attack had never examined him while alive. She believes the court should have therefore given less weight to his testimony than that of her father's physician, who had stated there was no pre-existing heart condition. The claimant also alleges that several of her father's co-workers were not truthful at trial because they were afraid of losing their jobs. The claimant believes that her mother did not receive justice and requests payment of this claim.

The Department of Workforce Development (DWD, formerly DILHR) recommends denial of this claim, which has been fully litigated before DILHR and DWD, and reviewed upon appeal. DWD notes that the denial of worker's compensation benefits was upheld by DILHR in 1973 and Dane County Circuit Court in 1975. DWD points to the circuit court decision, which notes that there was conflicting testimony by two doctors, one testifying that the strenuous work performed by her father contributed to his death and one testifying that the work activities were not unusually strenuous and did not cause his death. The court decision stated that "the long recognized general rule is that where there are conflicts and inconsistencies in the medical testimony this is a matter for the department and not a reviewing court to resolve." DWD also notes that the claimant filed a new claim with DWD in 1996 alleging her father's death was due to occupational disease. This claim was dismissed by an administrative law judge in 1997 and that dismissal was upheld by the Labor and Industry Review Commission in 1998. DWD notes that although the claimant's attorney was disciplined for the handling of probate matters, none of these disciplinary proceedings involved her father's case and that it appears that Dane County Circuit Court was satisfied that the attorney had vigorously argued Mr. Tillman's case. DWD believes there is no evidence of negligence by any state agency and no equitable 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 with the state should assume and pay based on equitable principles.

2. William Damon Avery of Milwaukee, Wisconsin claims $30,000.00 for Innocent Convict Compensation pursuant to § 775.05, Wis. Stats. The claimant states that he served 6 years for a murder that was later connected to Walter Ellis, a Milwaukee man convicted of killing seven prostitutes in Milwaukee over a 21-year period. In February 1998, the body of Maryette Griffen, a drug-addict and prostitute, was found strangled on North 7th Street in Milwaukee. The claimant, who at the time ran a nearby crack house, voluntarily spoke with police about the case. The claimant alleges that he never confessed to the murder and that the police fabricated his confession. The claimant was not originally charged with Griffin's murder at that time, but he was charged with and convicted of drug dealing and sentenced to 10 years in prison. Later, in 2004, the Milwaukee County District Attorney's Office charged him with reckless homicide in Griffin's death, based on the statements of three prison inmates that they had heard the claimant confess to killing Griffin. The claimant maintained his innocence throughout his trial but was convicted in March 2005 and sentenced to 40 years in prison. The claimant continued to maintain his innocence after his conviction and in 2010 requested DNA testing on evidence from the crime scene. The DNA tests excluded the claimant and matched the profile of Walter Ellis, an accused serial killer. Two of the inmates who had testified against the claimant recanted their testimony, stating that they were coerced by police to testify against the claimant. One of the inmates who recanted, Jeffrey Kimbrough, also stated that the third individual who testified against the claimant (Kimbrough's cellmate) had told Kimbrough that he was lying about the claimant in order to get a reduced sentence. The claimant was released in May 2010 and his conviction was vacated in September 2010. The claimant requests

reimbursement for his wrongful conviction at the statutory rate of $5,000 per year.

The Milwaukee County District Attorney's Office declined to respond to this claim.

Based on the totality of the information summarized above and presented at the hearing, the Board concludes the claimant has provided clear and convincing evidence that he was innocent of the crime for which he was convicted and did not, by his act or failure to act, contribute to his conviction. The Board further concludes that pursuant to § 775.05, Stats., the claim should be paid in the amount of $25,000.00 from the Claims Board appropriation § 20.505.(4)(d), Stats. *[Member Means dissenting.]*

3. Forest Seaton Shomberg of Middleton, Wisconsin claims $102,500.00 for innocent convict compensation pursuant to § 775.05, Wis. Stats. The claimant states that he spent 6 years in prison for crime he did not commit. In November 2009, his conviction was overturned based on new evidence and he was awarded a new trial. The Milwaukee County District Attorney's Office subsequently dismissed all charges.

In the early morning hours of March 9, 2002, a UW student (S.B.) was sexually assaulted near State and Francis Streets. S.B.'s assailant dragged her in into an alley and grabbed her crotch. S.B. struggled with her assailant and he was unable to get past her pantyhose. She was able to pull his hand from her mouth and scream for help. A nearby security guard, Alan Ferguson, responded to her screams and her attacker ran off. Several days after the incident, investigating officers had S.B. and Ferguson individually work with a sketch artist to create a composite sketch of the attacker. S.B. stated that she only saw her attacker's face once—for less than a second in the dark. Ferguson stated that he saw the assailant twice, once without getting a good look at his face, and once when the assailant looked back as he was running away. In April 2002, S.B. identified the claimant in a lineup. The claimant was convicted of attempted sexual assault after a two-day bench trial and sentenced to twelve years in prison. The claimant maintained his innocence throughout his trial. Both he and his alibi witnesses voluntarily took polygraph tests and all passed the tests. No physical evidence linked the claimant to the assault.

In 2007, the claimant requested that DNA testing be performed on S.B.'s pantyhose, given the likelihood that her attacker, who "squeezed and groped" the victim, left behind skin cells on the pantyhose. The DNA testing found male DNA on the pantyhose and unquestionably excluded the claimant as a source of that DNA. The testing also excluded four other men who participated in the trial and may have innocently left behind skin cells on the pantyhose (Ferguson, ADA Robert Kaiser, Defense Attorney Arnold Cohen, and a private investigator).

The claimant appealed his conviction based on this new evidence. He also presented evidence that had come to light since his conviction regarding the unreliability of eyewitness testimony and composite sketches. The claimant notes that since the emergence of DNA testing, eyewitness misidentification has been identified as the single leading cause of wrongful convictions in the U.S. The claimant also presented evidence showing that composite sketches can be problematic. The claimant points to the fact that S.B. stated that she did not realize her assailant was bald until she saw the final composite sketch, which was based on Ferguson's description of the attacker as bald. The claimant believes that this suggests that S.B.'s memory of her assailant's face was influenced by the sketch which led to her misidentification of the claimant in the lineup. In his decision overturning the conviction, Judge Fiedler, who also conducted the original bench trial, found the DNA test results to be highly probative. He also referenced the new information regarding the reliability of eyewitness identification and the use of composite sketches.

The claimant requests reimbursement for his wrongful conviction. He states that he did nothing to contribute to his conviction but steadfastly maintained his innocence throughout his trial and appeal. He requests the statutory amount of $5,000 per year of his incarceration, plus $77,500 for his appellate legal fees.

The Milwaukee County District Attorney's Office (DA) recommends denial of this claim. The DA notes that no court has ever ruled the claimant innocent of this crime, Judge Fiedler simply found that the legal standard had been met by the defendant to obtain a new trial. The DA also points to the fact that at the original trial Judge Fiedler found both the claimant's testimony and that of his alibi witnesses not credible regarding his whereabouts at the time of the attack. Nothing in Fiedler's decision overturning the conviction indicates that his opinion of the credibility of those witnesses had changed. The DA points to the fact that the claimant has a long criminal history, including an additional conviction after his release. The DA also notes that the claimant's primary alibi witness, his girlfriend, has lied to police on previous and subsequent occasions in order to protect the claimant.

The DA notes that the question before the Board is not whether the State has proven the claimant guilty of this crime, but whether the claimant has shown "clear and convincing evidence" of his innocence, as required by § 775.05, Stats. The DA believes that a review of the original trial transcript, as well as the claimant's past and present conduct will show the credibility problems of the claimant and his alibi witnesses. The DA states that its decision not to retry case is not "clear and convincing evidence" of the claimant's innocence but simply reflects the reality that the State has an obligation to only pursue cases which they are confident they can prove beyond a reasonable doubt.

The DA believes the claimant has failed to meet his burden to present clear and convincing evidence of his innocence and recommends denial of this claim.

Based on the totality of the information summarized above and presented at the hearing, the Board concludes the claimant has not provided clear and convincing evidence that he was innocent of the crime for which he was convicted and did not, by his act or failure to act, contribute to his conviction, as required under § 775.05, Stats.

4. Beth Reeves of Crested Butte, Colorado claims $161,894.72 for innocent convict compensation pursuant to § 775.05, Wis. Stats. The claimant was arrested in June 2005 and charged with theft by contractor and

embezzlement in relation to three building/remodeling jobs in Lake Geneva, Wisconsin performed by the company owned by the claimant and her husband, Reeves Custom Builders (RCB). The claimant's husband, Arthur Reeves, was also charged. The claimant states that Arthur Reeves was responsible for the day-to-day running of the business and that she served as RCB's secretary/treasurer and bookkeeper. The claimant states that the three complainants were disgruntled customers, who became angry when RCB filed liens on their property for payment of monies owed for the building/remodeling work. The claimant states that the three complainants convinced the Walworth County District Attorney (DA) to file the charges. She notes that two ADA's in office turned down the case because they felt it was civil, not criminal, in nature, however, a third ADA, Steven Madson, took the case. The case went to trial in January 2008. On the second day of trial, Arthur Reeves pled guilty to three counts of embezzlement. The claimant's trial proceeded before a jury.

The claimant alleges that the ADA Madson knew well before the trial that one of the complainants committed perjury during his testimony at the preliminary hearing. The claimant states that after the preliminary hearing phase of the case, Madson, met with the complainants and told them the State could not win the case without hiring an expert accounting witness. Madson told the complainants the DA's office did not have the funds to hire this witness and that if the trial was to proceed, the complainants would have to pay for the expert accounting witness. The claimant states that this private party payment arrangement was never disclosed to the court, the defense, or the jury. The claimant states that Madson, in fact, misled the jury by referring to the expert witness as the "State's" witness and that the witness stated that he was "hired by the State of Wisconsin." The claimant states that this private payment arrangement violated public policy, violated the prosecutor's constitutional obligation to disclose exculpatory and impeaching evidence to the defense, and violated the claimant's due process right to a fair trial by misleading the jury about the true role of the expert witness.

The claimant also alleges that the ADA did not maintain the integrity of the evidence because the financial information for the three projects was mixed together in nine banker's boxes, which were provided to the expert accounting witness to sort out. The claimant also states that the ADA did not verify the findings of the expert witness or the complaining parties and that there was evidence in the files showing that the damages claimed by the complaining parties were incorrect.

The claimant also alleges that the subpoena obtained by Madson for the Reeves' financial records was not supported by probable cause, was overbroad in that it demanded every financial record pertaining to RCB for a five year period, and that it improperly demanded production of the Reeves' tax returns.

The claimant also alleges that the jury was exposed to extraneous information during deliberations, including improper statements of law by the jury foreman and the production of an unredacted, full transcript, of which only small portions had been admissible in court.

The jury returned a guilty verdict and the judge sentenced the claimant in May 2008. The claimant was placed on probation for five years and sentenced to ninety days in jail. The court did not impose a fine but scheduled a separate restitution hearing. During the first restitution hearing, the private party payment arrangement for the expert accounting witness was first disclosed by Madson. The claimant filed a post-conviction relief motion in June 2009, which was denied. The claimant filed an appeal in January 2010. The claimant notes that the Attorney General's Office agreed with her argument regarding the private party payment arrangement and filed a brief with the court requesting reversal of her conviction. In May 2011, the Court of Appeals agreed that the nondisclosure of the private party payment arrangement was prejudicial and overturned the claimant's conviction.

The claimant notes that, although the State attempted to re-try her for the charges in March 2012, the trial judge granted the claimant's motion to suppress all evidence acquired from the subpoena for the Reeves' financial records. The State then dismissed all charges against the claimant.

The claimant believes her prosecution was unethical and that ADA Madson committed misconduct by ignoring both exculpatory evidence and the perjured testimony of one of the complainants, and by arranging for and then concealing the unconstitutional private party payment arrangement for the expert accounting witness. The claimant states that but for this misconduct, she never would have been convicted and would not have had to spend tens of thousands of dollars and years of her life defending herself against unfounded charges. She requests payment for her wrongful imprisonment and attorneys' fees.

The Walworth County District Attorney's Office (DA) recommends denial of this claim. The DA believes that the claimant is guilty of several felonious acts and intended to re-try her in the spring of 2012. Given the court's ruling on the subpoena for the Reeves' financial records, the DA was forced to reassess the probability of winning the case. The DA did not believe it could prove the case beyond a reasonable doubt without the evidence obtained from the subpoena and therefore dismissed the charges against the claimant. The DA states that this decision was based solely on the unavailability of the financial evidence, not on any determination regarding the claimant's innocence.

Based on the totality of the information summarized above and presented at the hearing, the Board concludes the claimant has not provided clear and convincing evidence that she was innocent of the crime for which she was convicted and did not, by her act or failure to act, contribute to her conviction, as required under § 775.05, Stats. *[Member Means not participating.]*

5. David R. Turnpaugh of Milwaukee, Wisconsin claims $28,201.20 for attorneys' fees and compensation as an innocent convict pursuant to § 775.05, Wis. Stats. In March 2006, the claimant was convicted of one count of soliciting prostitution in violation of § 944.30(1), Wis. Stats., and one count of bail jumping in violation of § 946.49(1)(a), Wis. Stats. The claimant was sentenced to 60 days in Milwaukee County Jail for the prostitution charge

and ultimately served three days in custody and 57 days on electronic monitoring. The claimant served 12 month probation for the bail jumping charge. In September 2006, the claimant appealed his conviction on the grounds that there was insufficient evidence to support the prostitution charge. The Court of Appeals ruled in his favor and reversed the conviction. In 2007, the Circuit Court entered a judgment of acquittal on both counts and ordered that the claimant be reimbursed by Milwaukee County and DOC.

The claimant states that he never solicited any type of sexual activity from the undercover officer, but only stopped to speak with her because she seemed agitated and he thought she was in trouble. While on electronic monitoring, the claimant was only allowed to leave his residence for work-related activity. He states that this restriction, and the news of his arrest and conviction, had a substantial negative impact on his computer networking business, of which he was the sole employee. He also states that because his work includes consulting on IT security issues, his conviction had a negative impact on his ability to obtain work as a consultant.

The claimant requests $5,000 compensation for the time he served on both counts. He also requests $23,201.20 for attorneys' fees relating to his initial defense, his appeals and bringing his claim before the Claims Board.

The Milwaukee County District Attorney's Office (DA) believes that the jury transcripts from the claimant's original trial speak for themselves. The DA has no further recommendation regarding this claim.

This claim was originally considered at hearing by the board on 12/9/10. The board denied the claim. The claimant filed a Chapter 227 review request with the Circuit Court on 1/26/11. The Circuit Court upheld the Board's denial of the claim. The claimant appealed the Circuit Court decision on 10/6/11. On 5/22/12, the Court of Appeals reversed the Circuit Court's order and remanded the claim back to the Claims Board for an assessment of "what will equitably compensate" the claimant under the guidelines set out in Wis. Stat § 775.05(4).

Based on the totality of the information summarized in the claim and presented at the hearing, and weighing the equitable factors, the Claims Board finds that the claimant is entitled to $0 in compensation and is entitled to $0 for attorneys' fees, costs and disbursements. A significant equitable factor is that, while he is innocent as a matter of law, the Board believes the claimant's actions contributed to his convictions and therefore, as a matter of equity, discount any compensation to which he may have been entitled. In particular, there was evidence presented at his trial showing that although he may not have solicited sexual intercourse from the police decoy, he did solicit other sexual activity in exchange for money.

Member Taylor dissenting: When an Innocent Convict Compensation claim is brought forth before the WI State Claims Board, the Board must consider whether the claimant has demonstrated his or her innocence by clear and convincing evidence. Mr. Turnpaugh has shown that by no recorded action or statement did he express his intent to solicit an act of prostitution nor did he partake in an act of prostitution. A criminal act requires both intent and an act but both are absent. These facts provide both clear and convincing evidence of his innocence. Given his clear innocence, the WI State Claims Board should have paid him based on equitable principles for the time he served as an innocent man imprisoned.

6. Kelle and Brian Dorn of Antigo, Wisconsin claim $6,638.25 for medical costs incurred due to allegedly improper notice that the claimant's BadgerCare benefits were terminated. The claimant states that BadgerCare rules require a 10 day notice prior to a "negative action", such as termination of benefits. The claimant states that she received notices in January and February 2011 regarding renewing her benefits prior to March 1, 2011. She called her county social services office and made an appointment to provide her caseworker with the documentation necessary to renew her benefits. The claimant states that the first available appointment was March 4, 2011, but that the county social services staff told her not to worry about the March 1 deadline, because she had called to make her appointment prior to that date. The claimant states she received a notice from the county on March 4th indicating that her BadgerCare benefits had not changed. On March 14th the claimant received another notice requesting payment of an unspecified premium by March 18th. The claimant called the county on March 16th requesting the amount of the premium and went to the social services office that day to pay the premium. She states that county staff told her she did not need to pay the premium and that her caseworker would provide further direction after she had finished processing the claimant's renewal paperwork. On March 25, 2011, the claimant received a notice stating that her BadgerCare benefits had terminated on March 1, 2011. The claimant believes this notice violates the 10 day notification rule. The claimant had received medical services on March 1, 2011. The claim for these services was not submitted by the health care provider until May, 2011 and the claimant was not aware that payment had been denied until she received a billing from the provider in July. She attempted to appeal the termination of her BadgerCare benefits at that time to the Division of Hearings and Appeals, however, her appeal was rejected as untimely because more than 45 days had passed since the claimant was notified of her benefit termination. The claimant states she would have canceled her medical procedure if she had been aware her benefits were not in force on March 1st, but that due to the multiple confusing notices and information provided by county social services staff, she was not aware of the termination until after the procedure. She requests reimbursement for the medical bills incurred.

DHS initially recommended denial of this claim. On February 16, 2011, the claimant was sent a notice that her BadgerCare benefits would end on March 1st, which fulfilled the 10 day notification rule. The notice further stated that the claimant could appeal that decision until April 18, 2011. Towards the end of March the caseworker completed her review of the claimant's renewal application. DHS stated that if the documentation had shown the claimant was eligible for BadgerCare benefits, her benefits would have been restored with no gap in coverage. However, the claimant was found not eligible for benefits

because she exceeded the income limit and had access to employer provided insurance. A notice was sent to the claimant on March 25, 2011, that she had been found ineligible for benefits as of March 1st and that she had until May 10th to appeal that decision. DHS stated that claimant's appeal to Hearings and Appeals was untimely.

This claim was originally considered at hearing on September 26, 2012. The board deferred decision of the claim at that time and requested that DHS staff determine how much the BadgerCare Plus program would have paid towards the claimed bills had the claimant been eligible at the time of service. DHS has determined that BadgerCare Plus would have paid $84 for the St. Mary's Hospital outpatient bill and $610.11 for the Northwoods Anesthesia bill. DHS states that if the Claims Board determines that Ms. Dorn should have had BadgerCare Plus coverage through March 1, 2011, the department will change the certification for Ms. Dorn to cover March 1, 2011, and the claimants should notify the providers that they should direct their bills to the BadgerCare Plus program for payment.

The Board finds that the equities support the above resolution proposed by DHS and directs the claimants to notify their medical providers to direct their bills to DHS for final resolution once DHS notifies claimants to do so. Provided these steps are taken, the Board understands this claim is withdrawn and no further action is necessary by the Claims Board.

7. Thomas Barbian of Milwaukee, Wisconsin claims $37.00 for cash missing from claimant's property while under control of DOC Probation and Parole. The claimant was taken into custody on October 5, 2010. The claimant's Probation and Parole officer was at a hearing at the time the claimant was taken into custody and she asked that his property be left on her desk so that she could inventory it when she returned. When she returned to her office after the hearing, there was an unsigned note on her desk indicating that the $37 cash the claimant was carrying when taken into custody had been placed in the office safe. When the claimant was released, the $37 could not be found in the safe and none of the office staff recalled writing the note. The claimant requests reimbursement in the amount of $37.

DOC recommends payment of this claim and agrees with the facts of the matter as presented by the claimant.

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

8. Tramell Starks of Waupun, Wisconsin claims $228.93 for replacement cost of television, shipping charges, and photocopies for filing this claim. The claimant is an inmate at Waupun Correctional Institution. He alleges that his television was damaged while under staff control. He states that he was sent to segregation on 4/7/11 and that his property, including his TV, was taken to the property room and inventoried on 4/11/11. The claimant points to the fact that property room staff is required to check all electronic devices upon inventory and make note of any defective or damaged items. The claimant states that DOC admits there are no notations that the claimant's TV was broken when it was inventoried in the property room. The claimant's TV was returned to him on 7/1/11 when he was released from segregation. The claimant states that he immediately notified staff that the screen was cracked. The claimant mailed out the TV to a repair shop and filed an Inmate Complaint (ICE) for repair costs. The repair shop later informed him the TV was not worth fixing. The claimant purchased another TV and filed an ICE requesting the cost of the new TV. His ICE was denied, as was his appeal. The claimant states that the TV was only one year old and therefore unlikely to be susceptible to breakage due to "changing conditions of heat, cold, humidity, weather and age-related stress". The claimant also notes that, although DOC alleges that camera footage proves that DOC staff did not drop the TV while packing it at the claimant's cell, DOC clearly did not review footage from all cameras showing the transport of the TV to the property room and the many days of property room camera footage covering the time period the TV was in staff control. Finally, the claimant notes that if the TV had been damaged prior to receipt in the property room, staff would have immediately notified him and required that he mail out the TV or let it be destroyed by staff, because damaged electronics are not allowed.

DOC recommends denial of this claim. Although the claimant's property was not inventoried on 4/7/11, it was packed by WCI property staff, who would have noted any damage to the TV on the Temporary Lockup Property Form. No damage was noted by staff. In addition, DOC states that on 7/1/11 when the TV was returned to the claimant, at least three staff members would have handled the TV closely enough to note any damage. DOC has reviewed video tape of the claimant receiving his television and the video clearly shows that no staff member dropped or did anything else to damage the TV. DOC states that if at any time staff had noticed damage to the TV, it would have been classified as contraband and required to be disposed of pursuant to WCI policies and procedures. The claimant's Inmate Complaint was denied because there was insufficient evidence that the damage to the TV was caused by WCI staff.

This claim was originally considered in closed session on September 26, 2012. The DOC filed its response to this claim on September 24, 2012, therefore, the claimant did not have an opportunity to receive and respond to DOC's recommendation prior to the Claims Board meeting. The board deferred decision of this claim in order to give the claimant an opportunity to respond to DOC's filing.

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 with the state should assume and pay based on equitable principles.

9. Antonio D. Johnson of Waupun, Wisconsin claims $168.00 for value of missing or damaged property allegedly caused by DOC staff in two incidents at Waupun Correctional Institution (WCI) where the claimant is an inmate. The claimant states that on 3/9/11 Sergeant Kimball, who the claimant alleges is known for damaging inmate property, ordered the claimant to wait downstairs while she searched his cell. The claimant states that he heard "what sounded like heavy items being thrown around the cell" and

that he went back upstairs because he was concerned that Kimball was damaging his property. The claimant alleges that the cell was "in shambles" in violation of the rules regarding inmate cell searches. After the search, the claimant learned that his fan was broken, his headphones were damaged, and a pair of eyeglasses and his digital antenna were missing. He filed complaints with ICE and appealed to CCE but both complaints were denied. Regarding the second incident, on 7/7/11 the claimant was placed in segregation for a rule violation. He alleges that WCI staff left his personal property in his cell unsupervised for two weeks before inventorying and packing it up. The claimant states this is a violation of WCI policy, which requires property to be inventoried and packed immediately upon an inmate's placement in segregation. The claimant believes some of his property was stolen during this two-week period, specifically, a baseball cap, a checkerboard, a pair of Nike shoes, and a calculator. The claimant states that these items were missing from his property when it was returned after his release from segregation and that the items were also not listed on the inventory form, which he believes indicates they were taken during the two-week period his property was left in his cell. The claimant also noticed that his eyeglasses were damaged when he received his property. The claimant filed a complaint with ICE but it was rejected because the missing items were not listed on the inventory report and because the eyeglasses may have broken easily, regardless of the actions of WCI staff. The claimant believes it is obvious that his glasses were broken while under staff control because if they had been broken earlier, they would have been confiscated as contraband.

DOC recommends denial of this claim. DOC states that, contrary to the claimant's assertions, WCI staff fully complied with the institution's policies regarding inventory of inmate property upon transfer, release, and placement in segregation. DOC states that the claimant is requesting reimbursement for items that were either damaged while in his possession or items he did not possess at the time of the inventories. DOC notes that when the claimant was placed in segregation in March 2011, his inventory form showed no antenna, no fan, no headphones and one pair of eyeglasses. Therefore, DOC states there is no evidence that these items were lost or damaged while under staff control. The claimant was again placed in segregation in July 2011 and his property inventoried. The claimant again filed a complaint for damaged lost property. DOC states that with respect to his claim for the checkerboard, tennis shoes and calculator; the July 2011 inventory form clearly show that no such items existed. With respect to the baseball cap; WCI staff found the cap and noted no damage. With respect to the damaged glasses, DOC states that the eyeglasses were not broken at the time of inventory because if they had been, they would have been seized by property staff as contraband. DOC believes the claimant has provided no evidence of any property lost or damaged by WCI staff and that his claim should be denied.

This claim was originally considered in closed session on September 26, 2012. The DOC filed its response to this claim on September 25, 2012, therefore, the claimant did not have an opportunity to receive and respond to DOC's recommendation prior to the Claims Board meeting. The board deferred decision of this claim in order to give the claimant an opportunity to respond to DOC's filing.

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 with the state should assume and pay based on equitable principles.

The Board concludes:

That the following claims are denied:
Marion Lynette
Forest Seaton Shomberg
Beth Reeves
Trammel Starks
Antonio Johnson

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

William Damon Avery	$25,000.00	§ 20.505(4)(d) ,Stats.
Thomas Barbian	$37.00	§20.410(1)(b), Stats.
David R. Turnpaugh	$0.00	

That based upon the proposed resolution recommended by the agency, the following claim is withdrawn:
Kelle and Brian Dorn

Dated at Madison, Wisconsin this 12th day of December, 2012.

STEVE MEANS
Chair, Representative of the Attorney General
GREGORY D. MURRAY
Secretary, Representative of the Secretary of Administration
BRIAN HAGEDORN
Representative of the Governor
LENA TAYLOR
Senate Finance Committee
PATRICIA STRACHOTA
Assembly Finance Committee

Pursuant to Wis. Stats. 13.172 (2) and (3), attached is the list of agency reports received from executive branch and legislative service agencies for the month of December, 2012.

WHA Information Center
2009-2001 Wisconsin Inpatient Hospital Quality Indicators Report
Pursuant to 153.22, Wis. Stats.
Received December 4, 2012.

Department of Natural Resources
2012 Green Tier Biennial Progress Report
Pursuant to 299.83(8)(h), Wis. Stats.
Received December 7, 2012.

Department of Natural Resources
Invasive Species Report
Pursuant to 23.22(6), Wis. Stats.
Received December 10, 2012.

Legislative Audit Bureau
WRS Annuitants Hired by Employers Participating in the WRS
Received December 14, 2012.

Legislative Audit Bureau
UW System's Role in WiscNet and Grant-Funded Networks
Received December 18, 2012.

Medical College of WI
Annual Report for the Breast and Prostate Cancer Research Program
Received December 26, 2012.

Legislative Audit Bureau
Wisconsin Educational Communications Board
Pursuant to 440.42(3), Wis. Stats.
Received December 21, 2012.

Claims Board
Claims heard on December 12, 2012
Pursuant to 16.007, 775.05, Wis. Stats.
Received December 27, 2012.

Department of Corrections
Use of overtime in each state adult correctional institution for FY 12
Pursuant to 301.03(6t), Wis. Stats.
Received December 28, 2012.
Referred to joint committee on **Finance**.

Department of Children and Families
Child Abuse and Neglect Report, 2011 Data
Pursuant to 48.981, Wis. Stats.
Received December 27, 2012.

WI Economic Development Corporation
2012 Annual Report
Pursuant to 238.07 (1), Wis. Stats.
Received December 28, 2012.

Department of Administration
Temporary Reallocation of Balances
Pursuant to 20.002 (11)(f), Wis. Stats.
Received December 28, 2012.
Referred to joint committee on **Finance**.