



Legislative Fiscal Bureau

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March 16, 2010

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Bill 391: Payment of Claim to Stillmunkes, Inc.

SUMMARY OF BILL

Senate Bill 391 would direct the state to pay \$30,000 from the Department of Natural Resources' (DNR) SEG wild turkey restoration (turkey stamp) appropriation for payment of a claim against the state made by Stillmunkes, Inc., to reimburse the company for brush removal and forestry services performed at the Yellowstone Wildlife Area in 2008. The bill specifies that acceptance of the payment would release the state from any further liability resulting from services performed by the claimant at the Yellowstone Wildlife Area in 2008. Senate Bill 391 was introduced on November 9, 2009, and referred to the Senate Committee on Transportation, Tourism, Forestry, and Natural Resources. On February 4, 2010, the Committee recommended passage of the bill on a vote of Ayes 6, Noes 0.

BACKGROUND

The Department of Natural Resources (DNR) manages Yellowstone Wildlife Area, a 4,000 acre property located in Lafayette County adjacent to Yellowstone Lake State Park. The property consists mostly of rolling upland grass and agricultural fields, and also includes woods and an oak savannah. Under current law, DNR is authorized to contract with private contractors for work conducted on Department property.

Stillmunkes, Inc., of Lamotte, Iowa, submitted a claim to the state in 2009 for payment for brush removal services allegedly owed pursuant to a purchase order with the Wisconsin Department of Natural Resources (DNR). The Senate Journal dated September 23, 2009, described the claim and the recommendation by the Claims Board. In January, 2008, Mark Stillmunkes of Stillmunkes, Inc. submitted a bid to the DNR of \$130 an hour for brush removal and forestry

services on 80 acres in the Yellowstone Wildlife Area. On February 7, 2008, DNR issued a purchase order to Stillmunkes in the amount of \$20,800 for work to be completed on the property by May 31, 2008. The purchase order stated, the "amount show[n] is an estimate, actual amount paid will be based on actual authorized hours of services delivered". Stillmunkes completed work on the project in August, 2008, and submitted an invoice to DNR for \$96,850. DNR paid Stillmunkes \$20,800 (the amount of the purchase order) but refused to pay the remaining balance. Stillmunkes asserted that DNR approved all of the work he provided and requested reimbursement for the balance of \$76,050.

According to Stillmunkes, unforeseen conditions on the land caused delays in the project. Stillmunkes stated that, prior to the project, a DNR employee represented to Stillmunkes that all brush on the site (that Stillmunkes would be responsible for chipping and clearing) would be three inches in diameter or smaller. However, Stillmunkes found that there was actually much larger diameter brush, including large stumps and logs left behind from a previous logging operation on the property. Stillmunkes contacted the DNR employee and requested approval to continue work on the property beyond the May 31, 2009, deadline on the purchase order, and that the employee told him to continue until the work was completed. Further, Stillmunkes alleged that he informed the DNR employee that continuing the project to completion would mean he would go over the amount of the purchase order and that the employee told him not to worry because he would be "paid by the hour".

According to the Department, Stillmunkes indicated to DNR that he could complete wood chipping and clearing on the property at a rate of one-half acre to an acre per hour. DNR based the amount of the purchase order on the conservative end of Stillmunkes's estimate of one-half acre completed per hour, and issued a purchase order for 160 hours of service (\$20,800). While DNR confirmed that Stillmunkes contacted the DNR employee and requested to work beyond the May 31st deadline and that the DNR employee approved the postponement of the deadline, DNR stated that the employee did not authorize any additional hours of service. Further, DNR stated that the DNR employee contacted Stillmunkes several times during the project and that Stillmunkes did not request authorization from DNR for additional hours of service.

Due to a particularly rainy spring, DNR stated that work on the project was postponed and did not begin until May. The DNR employee understood the delay of completion of the project to have been caused solely by weather and equipment problems. When Stillmunkes completed the project in August, 2008, he submitted an invoice to DNR for \$96,850 for 745 hours of service. DNR denied payment beyond the purchase order amount of \$20,800. The Department stated that 745 hours was an unreasonable amount and noted that completion of the project took 12 weeks, which would equal 62 hours of work per week on the project, which DNR considered an unusually high number of hours per week for this type of physical labor. DNR also noted that Stillmunkes was unable to provide any proof that he had completed any hours of work beyond the original 160 hours authorized in the purchase order. Further, DNR argued that, if the work took more than four times longer than Stillmunkes originally estimated, DNR should not be required to pay for Stillmunkes's miscalculation of the bid.

The Claims Board recommended payment of the claim in the reduced amount of \$30,000 based on equitable principles. The Board also recommended that the claim be paid from the DNR wild turkey restoration appropriation (fish and wildlife account SEG turkey stamp revenues).

FISCAL EFFECT

The bill would direct the state to pay \$30,000 from DNR's SEG wild turkey restoration appropriation [20.370(1)(ht)] to Stillmunkes, Inc. The appropriation is a continuing appropriation in the fish and wildlife account of the conservation fund which is funded from sales of wild turkey stamps. Revenue from the wild turkey stamps is statutorily designated to be utilized exclusively for habitat and propagation projects for the benefit of wild turkeys. The July 1, 2009 balance in the appropriation was \$135,300. DNR staff indicate the project involved clearing brush to create an oak savannah in order to improve turkey habitat in the Yellowstone Wildlife Area and was funded from the turkey stamp appropriation.

Prepared by: Erin Rushmer