STATE OF WISCONSIN

Senate Journal

One-Hundred and Fourth Regular Session

2:54 P.M. THURSDAY, June 6, 2019

The Senate met.

The Senate was called to order by Senator Fitzgerald.

Pursuant to Senate Rule 17 (6), the Chief Clerk made the following entries under the above date.

INTRODUCTION, FIRST READING, AND REFERENCE OF PROPOSALS

Read and referred:

Senate Joint Resolution 44

Relating to: supporting the efforts by the State of Wisconsin and others in the Mississippi River Basin to work together to achieve the goals of the Gulf Hypoxia Action Plan and a reduction of the hypoxic zone in the Gulf of Mexico.

By Senators Shilling, Smith, L. Taylor, Carpenter, Cowles, Schachtner and Miller; cosponsored by Representatives Billings, Tranel, Petryk, Doyle, Oldenburg, Pronschinske, Anderson, Neubauer, Shankland, VanderMeer, Kolste, Considine, Sargent, Emerson, Spreitzer, Pope, Hesselbein, Skowronski, Kulp, Ohnstad, Subeck and C. Taylor.

To the committee on **Senate Organization**.

Read first time and referred:

Senate Bill 255

Relating to: regulation of transportation network companies and their drivers and providing a penalty.

By Senators Larson, Risser, Bewley, Hansen, Smith and L. Taylor; cosponsored by Representatives Subeck, Sinicki, C. Taylor, Sargent, Considine, Anderson, Vruwink, Skowronski, Fields and Spreitzer.

To the committee on **Government Operations, Technology and Consumer Protection**.

Senate Bill 256

Relating to: local regulation of transportation network companies, their drivers, and the drivers' vehicles.

By Senators Larson, Risser, Bewley, Hansen, Smith and L. Taylor; cosponsored by Representatives Subeck, Sinicki, C. Taylor, Sargent, Considine, Anderson, Vruwink, Skowronski, Fields and Spreitzer.

To the committee on **Government Operations, Technology and Consumer Protection**.

Senate Bill 257

Relating to: eliminating the personal property tax and making an appropriation.

By Senators Stroebel, Marklein, LeMahieu, Craig, Feyen, Jacque, Kapenga, Nass, Testin, Tiffany and Wanggaard; cosponsored by Representatives Knodl, Kulp, Allen, August, Born, Brandtjen, Brooks, Dittrich, Duchow, Edming, Felzkowski, Gundrum, Horlacher, Hutton, James, Kitchens, Kuglitsch, Kurtz, Macco, Magnafici, Murphy, Mursau, Neylon, Novak, Oldenburg, Ott, Petersen, Plumer, Pronschinske, Quinn, Ramthun, Sanfelippo, Schraa, Skowronski, Snyder, Sortwell, Stafsholt, Steffen, Steineke, Summerfield, Swearingen, Tauchen, Thiesfeldt, Tittl, Tusler, VanderMeer, Vorpagel, Wichgers, Wittke, Zimmerman and Jagler.

To the committee on **Agriculture, Revenue and Financial Institutions**.

Senate Bill 258

Relating to: creating a grant program to support after-school and out-of-school-time programs, granting rule-making authority, and making an appropriation.

By Senators Darling, Roth, Testin and Wanggaard; cosponsored by Representatives Rohrkaste, Thiesfeldt, Ballweg, Kulp, Magnafici, Novak, Oldenburg, Shankland, Skowronski, Snyder, Stafsholt, Steffen, Tusler and VanderMeer.

To the committee on **Education**.

Senate Bill 259

Relating to: trauma-informed care position grants and making an appropriation.

By Senators Testin, L. Taylor, Olsen, Risser, Schachtner, Wanggaard and Wirch; cosponsored by Representatives Tittl, Brostoff, Anderson, Bowen, Brandtjen, Cabrera, Crowley, Doyle, Edming, Haywood, Kulp, L. Myers, Milroy, Mursau, Neubauer, Plumer, Shankland, Sinicki, Skowronski, Snyder, Spiros, Stubbs, Subeck, C. Taylor, Tusler, Vruwink and Spreitzer.

To the committee on **Health and Human Services**.

Senate Bill 260

Relating to: changing the 12 percent rule regarding the total value of taxable property included in the creation of a tax incremental financing district in the village of Ontario.

By Senator Testin; cosponsored by Representative Oldenburg.

To the committee on **Economic Development, Commerce and Trade**.

Senate Bill 261

Relating to: underage sexual activity.

By Senators Wanggaard, Fitzgerald, L. Taylor, Risser and Carpenter; cosponsored by Representatives Dittrich, Thiesfeldt, Brandtjen, Kulp, Plumer, Ramthun, Skowronski, Spiros and Tusler.

To the committee on **Judiciary and Public Safety**.

Senate Bill 262

Relating to: eliminating personal conviction exemption from immunizations.

By Senators Carpenter, L. Taylor, Smith, Hansen, Miller, Risser, Ringhand and Larson; cosponsored by Representatives Hintz, Vorpagel, Kolste, Brostoff, L. Myers, Riemer, Goyke, Anderson, Stubbs, Zamarripa, B. Meyers, Subeck, Crowley, Steffen, Sinicki, Considine, Fields, Doyle, Vruwink, Spreitzer, Emerson, Pope, Ohnstad, Hesselbein, Billings, Skowronski and Neubauer.

To the committee on **Health and Human Services**.

Senate Bill 263

Relating to: bills making honorary designations of state highways or bridges.

By Senator Petrowski; cosponsored by Representatives Vos, Considine, Duchow, Krug, Mursau, Petersen, Ramthun, Schraa, Skowronski, Spiros, Subeck and Tusler.

To the committee on **Transportation, Veterans and Military Affairs**.

PETITIONS AND COMMUNICATIONS

Pursuant to Senate Rule 17 (5), Representative Rohrkaste added as a cosponsor of **Senate Bill 6**.

Pursuant to Senate Rule 17 (5), Representative Rohrkaste added as a cosponsor of **Senate Bill 8**.

Pursuant to Senate Rule 17 (5), Senator Hansen added as a coauthor of **Senate Bill 86**.

Pursuant to Senate Rule 17 (5), Representative Fields added as a cosponsor of **Senate Bill 113**.

Pursuant to Senate Rule 17 (5), Representative Fields added as a cosponsor of **Senate Bill 136**.

Pursuant to Senate Rule 17 (5), Representative Fields added as a cosponsor of **Senate Bill 142**.

Pursuant to Senate Rule 17 (5), Representative Fields added as a cosponsor of **Senate Bill 154**.

Pursuant to Senate Rule 17 (5), Representative Fields added as a cosponsor of **Senate Bill 161**.

Pursuant to Senate Rule 17 (5), Representative Fields added as a cosponsor of **Senate Bill 163**.

Pursuant to Senate Rule 17 (5), Representative Fields added as a cosponsor of **Senate Bill 198**.

Pursuant to Senate Rule 17 (5), Representative Vining added as a cosponsor of **Senate Bill 252**.

State of Wisconsin
Claims Board

June 5, 2019

Enclosed is the report of the State Claims Board covering the claims heard on May 13, 2019. Those claims approved for payment pursuant to the provisions of s.16.007 and 775.05 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,
AMY KASPER
Secretary

STATE OF WISCONSIN CLAIMS BOARD
The State of Wisconsin Claims Board conducted hearings at the State Capitol Building in Madison, Wisconsin, on May 13, 2019, upon the following claims:

Claimant	Agency	Amount
1. Robert Schlimm	Ag., Trade & Consumer Protection	$3,597.09
2. Michels Corporation	Transportation	$125,735.21
3. Vitech Systems Group	Employee Trust Funds	$14,300,000.00
4. Timothy Smunt	University of Wisconsin	$1,039,134.00

The following claims were decided without hearings:

Claimant	Agency	Amount
5. Pastori Balele	Justice	$1,114.91
6. Kelley Avery	Corrections	$139.52
7. Mekious D. Bullock, Sr.	Corrections	$190.46
8. Oscar Garner	Corrections	$173.25
9. James R. Harris	Corrections	$906.06
10. Frank Penigar	Corrections	$1,272.03
11. Dale M. Robinson	Corrections	$892.57

With respect to the claims, the Board finds:
(Decisions are unanimous unless otherwise noted.)

1. Robert J. Schlimm of Seymour, Wisconsin claims $3,597.09 for costs allegedly incurred because of incorrect information provided by the Department of Agriculture, Trade & Consumer Protection. Claimant is a 3rd generation dairy farmer. In 2017 he allegedly contacted DATCP to find out how to get a permit so Olivia Hennes, the daughter of one of his employees, could milk cows on his land. (Claimant's permit had expired because he had sold his cows.) Claimant was aware that the location of his well might be a problem because it was only 25 feet from the barn yard. He states that he contacted a DATCP inspector, who initially told him Hennes could not get a permit due to the location of the well, but then 10 days later said that they could get a permit in the claimant's name despite the well's location. Claimant and

Hennes proceeded to get the barn ready for milking. Clamant alleges a DATCP inspector visited the farm for a pre-license inspection and didn't say the well was a problem. Claimant received a new permit and an inspection notice in May 2017 with no remarks about the well. Hennes began milking in October 2017. During a regular, 6-month inspection in November 2017, the inspector marked the well out of compliance because it was < 50 feet from the barn and barnyard. The inspector told them they would have to drill a new well or lose their Grade A permit. Hennes could not afford the costs of drilling a new well. Claimant alleges that DATCP refused to work with them to solve the problem. Claimant also notes that testing showed no problems with the well water, so they did not qualify for assistance from the Wisconsin Well Compensation Program. Hennes was unable to continue milking and shut down. Claimant states that he and Hennes would never have proceeded to start up her business if they had known the well was going to be a problem and that they only did so because DATCP told them it was not a problem.

DATCP recommends denial of this claim. Firstly, DATCP notes that the "inspector" claimant contacted before applying for his milk producer license, was Don Mielke, who is claimant's dairy plant field representative, not an employee of DATCP. Mielke is the individual who gave claimant incorrect information about whether the well's location would be a problem. In addition, both claimant and Mielke were clearly aware, prior to applying for a license, that the location of the well was a problem and Mielke even gave claimant contact information for an employee at the Department of Natural Resources so he could get the well assessed and approved prior to applying for his license. DATCP notes that both claimant and Mielke signed the Grade A license application, falsely indicating that the well was > 50 feet from the barn/barnyard, when they both knew this was not true. The permit was granted based on that false representation. DATCP denies claimant's allegation that it was uncooperative. After the initial determination that the well was not compliant in November 2017, claimant was given additional time to fix the problem. A federal inspection in February 2018 found the well was not fixed. DATCP met with claimant and Hennes in April 2018 and provided three options for solving the problem. In May 2018, a routine inspection determined the well was still not compliant. In June 2018, claimant signed a Voluntary Compliance Agreement with DATCP which extended the Grade A permit for 210 days, allowing additional time to install a new well. Pursuant to the VCA, DATCP did not mark the well as non-compliant during the September 2018 inspection. In December 2018, DATCP was notified that the farm was out of business as of 10/1/18. DATCP notes that all of claimant's costs were for routine repair and maintenance necessary for milking equipment. Two of the invoices submitted are for charges incurred before claimant even applied for a new license in May 2017 and the remaining invoices are for costs incurred while he was producing and selling Grade A milk pursuant to his license. DATCP believes the bills submitted by claimant are nothing more than the normal cost of doing business as a milk producer and are not the responsibility of the state.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

2. Michels Corporation of Brownsville, Wisconsin claims $125,735.21 owed due to breach of contract by the Department of Transportation. In early 2016, DOT requested bids for a road reconstruction project in Winnebago County. Claimant states that responding contractors based their bids on the plans and drawings provided by DOT and also on DOT's Standard Specifications. Claimant alleges that in the absences of any "special provisions" for the project, the Standard Specifications are controlling. This road project involved both curb and gutter removal (C&G) and roadway removal. Claimant notes that the Standard Specifications provide that C&G attached to the adjacent roadway is measured and paid for under the "Removing Pavement" line item and C&G not attached to the adjacent roadway is measured and paid for under the "Removing Curb & Gutter" line item. The bid documents for this project contained both line items and indicated that there was only 15 linear feet to be removed under "Removing Curb & Gutter." Claimant was the low bidder and was awarded the contract. Once the project was underway, claimant alleged that the 15 lf measurement was incorrect and that there was, in fact, more than 4,500 lf of C&G separate from the adjacent roadway. Claimant notified DOT and requested an adjustment. DOT initially denied the request but eventually paid claimant for the additional amount removed, but not at the $33.45/lf price contained in claimant's bid. DOT instead paid claimant at a reduced rate of 6/lf. Claimant believes that this reduction was in violation of its contract with DOT. Claimant believes there is no constitutional bar to their claim because they are not asking for "extra compensation," but rather the amount they are entitled to be paid under the contract.

DOT recommends denial of this claim. Claimant relies on the Standard Specifications to support its allegations however, plans, not the Standard Specifications are controlling. DOT notes that this fact is itself set forth in the Standard Specifications, which state that if there are any discrepancies, the Standard Specifications govern last, only after plans and other documents. DOT also notes that claimant never asked for clarification or indicated the plans were in any way unclear. DOT points to the fact that whether or not the C&G was attached to the adjacent roadway made no difference to the removal process—it was all pulled out with a large backhoe at the same time—and claimant incurred no additional costs to remove the C&G because it was not attached. DOT states that although the WisDOT Review Panel did provide an equitable payment in order to maintain a good working relationship with claimant, it had no legal obligation to do so. The review panel concluded that the plans could have been clearer but also that claimant had failed in its duty to ask for clarification of any perceived ambiguities. The review panel awarded claimant $27,468.79 for removal of 4,580 lf C&G at a rate of $6/lf, which is a customary rate for this type of work. DOT states that granting this claim would not only be directly contrary to the Standard

Specifications but would also be unconstitutional. Wis. Const. art. IV, § 26(1), explicitly prohibits the legislature from granting extra compensation after services have been rendered or a contract has been entered into. DOT believes claimant was correctly paid for its services pursuant to the contract and has already received additional equitable compensation, therefore, both state law and equity have been fulfilled.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

3. Vitech Systems Group, Inc. of New York, New York claims $14,300,000.00 for alleged breach of contract by the Department of Employee Trust Funds. In February 2014, claimant and ETF entered into a $27,120,490 contract for the development and support of a software system to administer ETF's benefit programs. Claimant alleges that ETF breached the contract by improperly terminating the agreement, failing to comply with the agreement's conflict resolution provisions, and failing to pay for work claimant performed under the agreement. Claimant states that ETF did not provide proper written notice of any alleged material defaults and did not give claimant the opportunity to cure said defaults as required by the agreement. Claimant also argues that the material defaults alleged by ETF were not actual defaults and therefore did not justify termination of the contract. Claimant states that, contrary to ETF's allegations, it never "ceased all work" but rather, the parties had a legitimate disagreement regarding the scope of the project, which should have been resolved using the conflict resolution procedures outlined in the agreement. Claimant believes ETF failed to deal in good faith to resolve these issues. Claimant also alleges that ETF failed to pay claimant money owed for work performed under the agreement. Claimant states that during the design phase of the project, ETF made hundreds of changes to the scope of the project and repeatedly changed its mind about what it wanted, causing claimant to incur significant additional costs. Claimant attempted to deal with such changes without a change order because an ETF employee made representations that there would be later "horse trading" to account for the changes by relieving claimant of other tasks under the contract. Claimant states that it eventually requested a change order due to the volume of changes requested by ETF as well as claimant's belief that ETF was not abiding by its promise to "even out" the cost of the changes. Claimant believes ETF is in breach of the contract and requests compensation in the amount of $14.3 million.

ETF recommends denial of this claim. ETF states that it has paid claimant $14.3 million dollars over the course of four years in exchange for a product that provides only 7% of the agreed-upon functionality. ETF alleges that claimant showed no signs of being able to fulfill the terms of the contract, demanded millions of dollars in additional money for work already performed, and walked off the job. ETF alleges that the project began to experience serious delays when claimant failed to conduct required testing and risk assessments. Claimant's failure to conduct this testing caused serious delays in the rollout of the software. ETF notes that even after it accommodated claimant by providing additional funding and extending deadlines, claimant still failed to deliver a functional product by the new deadlines. In January 2018, claimant began to demand even more additional compensation for work already performed that was allegedly outside the scope of the contract. However, ETF notes that claimant was never authorized to perform any out of scope work and had no right to do so and then demand additional compensation in the absence of a formal change order. ETF informed claimant that such additional compensation was not contractually required, and that the agency was unwilling to make such payments until claimant provided the promised software product. ETF states that in March 2018, claimant threatened to walk off the job unless ETF agreed to an additional $4 million for work already performed and to change the contract from a fixed price "as bid" structure to a "time and materials" structure. ETF attempted to resolve this dispute with claimant, but claimant walked off the job on March 27, 2018. Claimant cancelled meetings, stopped coming to the office, and reduced staff. When ETF attempted to communicate with claimant, the result was an auto-generated email referring questions back to ETF. ETF provided claimant with a written notice of default on March 30, 2018. ETF notes that it was not required to do so after claimant had abandoned the project in violation of the contract and that there are no required "magic words" in such a letter. The fact that ETF did not specifically use the terms "breach" or "notice of default" does not make the notice invalid. ETF states that after claimant walked off the job; ETF monitored its access to the system to assess whether claimant was continuing to work on the project. ETF observed no software development during this time but instead, observed that claimant was going into the system and changing the results of tests which documented failures to show those tests as achieving 97% success. Faced with concerns about the security of its systems and the fact that claimant was not working on the project, ETF disabled claimant's access. ETF believes that claimant abandoned the project, was provided proper notice, made no attempt to remedy the breach, and refused to communicate with ETF. ETF terminated its agreement with claimant on April 26, 2018.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles and that this claim would be best resolved in a court of law. Therefore, this claim is denied. [Member Finkelmeyer did not participate and exited closed session prior to deliberations.]

4. Timothy Smunt of Fox Point, Wisconsin claims $1,039,134.00 for damages related to alleged breach of contract by the University of Wisconsin-Milwaukee (UWM). Claimant served as dean of UWM's School of Business from 2009-2015. In 2015, pursuant to his employment contract with UWM, he joined the School of Business as tenured faculty. Claimant alleges that UWM breached his employment contract by failing to compensate him at the

promised faculty salary level, failing to provide a promised priority recommendation to a Wisconsin Distinguished Professorship (WDP), and failing to provide retirement contributions at promised levels. Claimant states that his employment contract required UWM to "rely on the data from" the annual Association to Advance Collegiate Schools of Business (AACSB) Salary Survey Report in determining claimant's salary upon his move to a tenured faculty position, specifically, the "Combined/Accredited/New Hires/Professor/90 percentile" category. Claimant alleges that the salary set by UWM is significantly lower than this category of the AACSB. Claimant also alleges that UWM has provided no evidence that it used the AACSB report, as required by the contract, in determining his salary. Claimant also states that UWM waited 6 months before nominating him for a WDP and nominated other candidates along with claimant. He points to the fact that one of the other nominees received a WDP as evidence that UWM did not "make every effort" to obtain a WDP for him as required by the contract. Finally, claimant alleges that during his employment negotiations with UWM, he was told that his retirement contributions would be based on his three highest salary years. He states that he was never told there was a salary cap on retirement calculations. Claimant states that he would not have accepted employment with UWM in 2009, had he known UWM would break these promises to him.

UWM recommends denial of this claim. Claimant seems to suggest that UWM was required to rely exclusively on AACSB data in setting his faculty salary. As provided by claimant's employment contract and explained in communications with claimant, the AACSB report was one data point used in determining claimant's salary. UWM also considered factors required by UW System policy, such as the salary of other faculty of the same rank, length of time served as an administrator, and other factors normally considered when setting faculty salaries. If UWM intended to pay claimant at the specific amount set in the AACSB report, it would have stated so in his employment contract. UWM states that neither claimant's contract, nor any other communications represented to him that the AACSB report would be the exclusive factor in determining his faculty salary. UWM also states that claimant's employment contract provided that UWM would "make every effort" to request a WDP, not that he was guaranteed to receive one. Claimant's complaint that UWM waited 6 months before nominating him ignores the fact that UWM could not nominate claimant for a WDP until a WDP position became available. Moreover, the fact that UWM nominated several other individuals did not undercut claimant's nomination because there were at least five WDP positions available at the time claimant was nominated. Finally, UWM states that it never represented to claimant, nor provided in his employment contract, that a specific amount of money would be contributed to his retirement. UWM notes there is an IRS limit on the amount of annual compensation on which retirement contributions may be based and therefore, UWM is legally barred from making contributions in excess of that limit. UWM notes that information regarding the limit was available on ETF's website, contrary to claimant's assertions. UWM also points to the fact that every appointment letter sent to claimant from 2010 through 2014 specifically noted the salary limitation. UWM believes there is no merit to claimant's allegations that it is in violation of his employment contract and that his claim should be denied.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles and that this claim would be best resolved in a court of law. Therefore, this claim is denied.

5. Pastori M. Balele of Madison, Wisconsin claims $1,114.91 for refund of court-ordered costs allegedly paid twice. Claimant is a former state employee. Between 1987 and 2001, he pursued several lawsuits against various state agencies. In 2002, the court ordered claimant to pay damages to the Department of Justice in three cases, $1,114.91 for one case and $500 each for two additional cases. Claimant submits a carbon copy of a $1,114.00 check dated 10/10/2002 as proof that he paid the first of those three debts at that time. He left state service in 2002. In 2011, claimant began applying for positions at various state agencies but was unsuccessful. He filed a complaint against the Department of Corrections, but the Department of Workforce Development rejected his complaint because he allegedly had not paid his court-ordered debt. Claimant later requested a hearing and allegedly submitted evidence that he had paid the debt. He points to an April 2017 DWD preliminary decision that concluded that he had paid all his debts pursuant to the 2002 court order. Claimant states that DWD asked him to submit additional evidence proving payment, such as a more recent credit report, because the 2004 credit report he provided showed the debt as still outstanding. He alleges that he was confused and wrote another check for $1,114.91 in December 2017. Claimant points to his November 2017 credit report, which does not list the debt, as proof of prior payment. He also points to the fact that the state garnished his wages while he was a state employee and alleges that they would not have stopped doing so until the debt had been paid. In addition, he notes that the Department of Revenue never tried to collect the amount from his tax refunds even though these types of debts are usually referred to DOR for collection. Claimant believes that employees at various state agencies are harassing him because he is black and that DOJ employees are corrupt. He believes that DOJ has presented no legal defenses to his claim and requests reimbursement.

DOJ recommends denial of this claim. DOJ records indicate that claimant paid the $1,114.91 debt on 12/20/17 and a satisfaction of judgment was filed on 1/3/18. DOJ notes that claimant still has unsatisfied court-ordered debts. DOJ notes that the October 2002 check carbon copy provided by claimant is not proof that claimant submitted the check to the state or that the state cashed it. DOJ notes that DWD's preliminary determination that claimant had paid his debts was later rejected by the administrative law judge reviewing the decision and by the Labor and Industry Review Commission (LIRC), which found that there was no evidence

for making such a determination. DOJ notes that claimant presents his April 2004 credit report (with the debt) and his November 2017 credit report (without the debt) as proof of payment. However, claimant alleges that he paid the debt in October 2002, not between 2004 and 2017. In addition, DOJ notes that there are several outstanding court-ordered obligations not shown on the credit reports and that LIRC determined that credit reports were not sufficient evidence of payment. Claimant also submits a copy of a 1995 garnishment statement as evidence that the debt was paid in this manner. However, the debt in question was not ordered until 2002 and claimant left service later that year, so this also fails to prove payment. Finally, DOJ states that claimant's argument that these types of debts are "usually" referred to DOR for collection is incorrect. These debts may be referred to DOR, but it is not a routine practice and was not done in this case. DOJ believes claimant has provided no evidence that this debt was paid twice and recommends denial of this claim.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles. [Member Finkelmeyer did not participate and exited closed session prior to deliberations.]

6. Kelley Avery of New Lisbon, Wisconsin claims $139.52 for repayment of restitution deducted from his inmate account. Claimant was convicted in 1996. At that time, restitution was ordered in an amount "to be determined." In February and May 1997, the court ordered restitution based on memos submitted by a DOC Parole Agent. The forms stated that claimant waived his right to a hearing and agreed with the restitution amount. The court ordered the restitution even though neither form was signed by claimant. In late 2016, the Department of Corrections updated its accounting software and began deducting restitution from claimant's inmate account. Claimant filed a lawsuit to stop the deductions and in July 2017 the court vacated the restitution order and set claimant's restitution at zero. Claimant notes that DOC has conceded that the 1997 restitution order was not valid by refunding some of the money to his account. DOC refused to refund the remaining money because it already had been distributed to other parties. Claimant believes DOC cannot claim that it was unaware the restitution order was invalid when it was a DOC parole agent who submitted unsigned forms to the court, falsely asserting that claimant had been notified of and agreed with the restitution amount. Claimant requests reimbursement of the remaining restitution taken from his account.

DOC recommends denial of this claim because the department was following the directives of a valid court order and was not negligent. DOC notes that claimant's Amended Judgment of Conviction filed in July 2017 states "Previous restitution order now vacated by the Court." DOC was collecting restitution based on a court order and had no basis to believe that order was not valid. DOC is charged with the supervision of inmates, including their funds. Wis. Stat. § 301.32(1), authorizes DOC to use inmate funds "for the benefit of the prisoner" and paying down an inmate's lawful debt is clearly to his benefit. DOC notes that 2015 Act 355 amended § 301.32 to expressly authorize DOC to use an inmate's funds for payment towards applicable surcharges, victim restitution, or the benefit of the prisoner. DOC points to Division of Adult Institution Policy 309.45.02, which provides that if an inmate receives an amended Judgement of Conviction, DOC is not responsible to seek reimbursement from the entity that received the funds. DOC believes that doing so would revictimize the victim. In addition, DOC points to State v. Minniecheske, which found that a sentencing court lacks competency to order the state to reimburse inmates for money taken from their accounts.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

7. Mekious D. Bullock, Sr. of Waupun, Wisconsin claims $190.46 for repayment of restitution deducted from his inmate account. Claimant was convicted in 2007. In November 2016, the Department of Corrections deducted 50% for restitution from gift money claimant received from his family. Claimant states that deducting restitution from gift money violated his Judgment of Conviction (JOC) which states that restitution shall be paid pursuant to Wis. Stat. § 973.05(4)(b). That section provides that restitution can be deducted from: "not more than 25 percent of the defendant's commissions, earnings, salaries, wages, pension benefits under ch. 102, and other money due or to be due in the future…" Claimant points to two court cases, Kerby v. Litscher and Howard v. Litscher which he says support his interpretation of the statute—that these deductions cannot be made from gift monies. Claimant filed an inmate complaint, but it was denied. Claimant alleges that a Financial Program Supervisor lied during DOC's investigation when she stated that his original account had been set up "incorrectly" as deductions from wages only. Claimant believes that his JOC clearly states that deductions should only come from wages. Claimant contests DOC's assertion that Act 355 gave them the authority to deduct this money because Act 355 had an effective date of 7/1/16 and is not retroactive. Because claimant was convicted in 2007, he believes this act does not apply to him. Claimant also does not believe DOC should be able to deny the refund because the money has already been disbursed to other parties. DOC failed to follow the instructions given on his JOC and should not now be able to deny refunding the money.

DOC recommends denial of this claim because the department was following the directives of a valid court order and was not negligent. DOC states that when a JOC intends that deductions come only from wages, it clearly states "pay only" or "wages only" on the form. Claimant's JOC does not have this language. DOC states that claimant's account was originally set up as "wages only" in error, a mistake which was caught when DOC switched to a new accounting system

in late 2016. DOC notes that the Inmate Complaint filed by claimant was denied and that he also failed to appeal and therefore has not exhausted his administrative remedies prior to bringing this claim. DOC points to 2015 Act 355, which amended § 301.32 to expressly authorize DOC to use an inmate's funds for payment towards applicable surcharges, victim restitution, or the benefit of the prisoner. DOC notes that even before Act 355, Wis. Stat. § 301.32(1), authorized DOC to use inmate funds "for the benefit of the prisoner" and paying down an inmate's lawful debt is clearly to his benefit. Finally, DOC states that the money in question was not held by DOC for its own benefit but was disbursed to meet his court-ordered financial obligations.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

8. Oscar Garner of Waupun, Wisconsin claims $173.25 for money taken from his inmate account by the Department of Corrections. Clamant was convicted in 2003 in case no. 02CF7012. Claimant's Judgement of Conviction indicated that he owed a total of $665 for fines and surcharges ($320 fine, $20 court cost, $5 other, $70 mandatory victim/witness surcharge, and $250 DNA surcharge). The DNA surcharge was later vacated by the court, leaving a balance of $415. Claimant did not owe any restitution related to this case. At the time of his conviction, claimant had $500 bail on deposit. $415 of the bail money was applied to claimant's fines and surcharges, bringing the balance to zero. The remaining $85 was returned to the person who had posted the bail. Claimant notes that this money would not have been returned had he still owed money related to this case. In November 2016, claimant received a letter from DOC regarding several withdrawals made from his account for court obligations relate to two cases. The letter indicated that DOC had withdrawn $173.25 from claimant's account for allegedly unpaid obligations in case no. 02CF7012. Claimant filed an inmate complaint protesting that his debts for this case had been paid off by his bail on deposit and that DOC should not have taken additional funds. His complaint was denied. Claimant believes that DOC has provided no proof that he owed an additional $173.25 and requests return of that money.

DOC recommends denial of this claim. DOC states that claimant's original court obligations for case no. 02CF7012 were $665. After the court made adjustments, claimant owed $580 total. Claimant's bail money went towards $415 of these obligations and $85 was returned to the person who paid the bail. Claimant then owed $165 in remaining court obligations, which the DOC collected, along with a $8.25 statutory surcharge. These obligations were explained to claimant in November 2016. Claimant filed an inmate complaint in January 2017 and DOC again explained the obligations to him and denied his complaint. DOC notes that claimant never appealed this denial and therefore did not exhausted his administrative remedies prior to bringing this claim. In March 2017, DOC sent another letter explaining the deductions. This letter did contain an error, mistakenly referring to the obligations as "restitution" rather than costs, but the fact that these deductions had been explained to claimant twice before should have mitigated any confusion caused by the error. Finally, DOC points to § 301.31, which authorizes DOC to use an inmate's funds to pay obligations of that have been reduced to judgment. Wis. Stat. § 301.32(1), expressly authorized DOC to use inmate funds to be paid towards applicable surcharges, victim restitution, or "for the benefit of the prisoner" and paying down an inmate's lawful debt is clearly to his benefit. Finally, DOC states that the money in question was not held by DOC for its own benefit but was disbursed to meet claimant's court-ordered financial obligations.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

9. James R. Harris of Stanley, Wisconsin claims $906.06 for restitution money deducted from his inmate account by the Department of Corrections. Claimant was sentenced in 1995 with restitution in an amount "to be determined." In 1996, a probation and parole agent recommended $4,000 restitution and the court ordered restitution in that amount. Claimant states that his Judgment of Conviction (JOC) was not amended to reflect that restitution and that he was never notified. Claimant alleges that the court's restitution order was in violation of Wis. Stat. § 973.20(13)(c) and State v. Evans, which found that letting the probation department determine restitution amounts was not authorized by statute. Claimant notes that in 2009 (seven years before DOC began collecting the restitution) the probation office notified the District Attorney that the restitution order in claimant's case was invalid and that the DA should notify the court that the order should be vacated. The DA failed to take any action in response to this memo. DOC began collecting this restitution in November 2016 after the installation of new accounting software. Claimant filed a motion to stop this collection and the court vacated his restitution order in June 2018. By that time, DOC had collected $906.06 from claimant's account but refused to refund the money. Claimant believes the restitution order was invalid from day one and that DOC must return the funds. Claimant also believes that Wis. Stat. § 893.40 barred DOC from collecting this money more than 20 years after his conviction.

DOC recommends denial of this claim. DOC states that it collected this restitution money pursuant to a court order and stopped collection upon receipt of the amended JOC vacating the order. DOC notes that the amended JOC did not order DOC to reimburse claimant for money already collected. DOC points to the fact that the 2009 letter from probation to the DA's office stated that the DA "may" want to take action, however, the JOC was not amended until 2018. DOC states that it is not time-barred by Wis. Stat. § 893.40, because that section applies to a statute of limitations for commencement of an action on a civil judgment and DOC had not initiated an action against claimant, but was collecting outstanding

obligations imposed by the court, which DOC is mandated to collect. DOC points to Wis. Stat. § 301.31, which authorizes DOC to use inmate funds to pay prisoner obligations that have been reduced to judgement and Wis. Stat. § 301.32(1), which authorizes DOC to use inmate funds to pay surcharges, victim restitution, or for the benefit of the prisoner. DOC believes that paying down an inmate's lawful debts is to his benefit. Finally, DOC states that the money collected was not held by DOC for its own benefit but was disbursed to pay his court obligations. Division of Adult Institution Policy 309.45.02 provides that DOC is not responsible for clawing back money already disbursed when an amended JOC is received.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

10. Frank Penigar, Jr. of Stanley, Wisconsin claims $1,272.03 for restitution money deducted from his inmate account by the Department of Corrections. Claimant was convicted in 1996 and the Judgment of Conviction (JOC) at that time indicated that restitution amount was "to be determined." In October 1999, a DOC probation and parole agent submitted a memo to the court setting the restitution amount at $2,000. That memo indicated that the amount had "been reviewed with the defendant and the defendant disagrees with the amount of restitution." A document with the claimant's signature indicating he disagreed with the restitution amount accompanied this memo. This notice that claimant disagreed with the restitution amount triggered the need for a hearing. A hearing was scheduled but later canceled based on the submission of another DOC memo in May 2000, which stated that claimant agreed with the restitution amount. Claimant points to the fact that this memo does not contain his signature or initials as required. Based on this incorrect memo, the court canceled the restitution hearing and ordered $2,000 restitution. Claimant states that he was never notified of this order and was unaware this amount of restitution had been assigned. In November 2016, after installing new accounting software, DOC began deducting restitution from his account. Claimant believes these deductions, which began more than 20 years after his conviction, were in violation of Wis. Stat. § 893.40. In December 2016 he challenged the restitution order and the court found that proper procedures for determining the restitution amount were not followed and that the notice provided to claimant was untimely, unreasonable, and prejudicial. The court vacated the restitution order and set restitution at zero nunc pro tunc. Although DOC points to a November 1996 restitution memo signed by claimant, that memo was never submitted to the court. In fact, the state's own response to claimant's motion challenging the restitution stated: "Nothing provided to the State by the [DOC] shows that Mr. Penigar signed and/or initialed information/documents showing that he agreed with the restitution figure." Claimant believes DOC was negligent in the way it determined the amount of restitution, by submitting inaccurate documents to the courts, and in the unreasonable delay in collecting the restitution. He requests return of the restitution money deducted from his account.

DOC recommends denial of this claim. DOC states that it collected restitution money from claimant's account pursuant to a court order and stopped that collection as soon as it received the 2018 amended JOC. Although claimant alleges that he was unaware of the restitution order until 2016, DOC points to a November 1996 memo signed by claimant indicating that he agreed with the restitution amount. DOC states that it is not time-barred by Wis. Stat. § 893.40, because that section applies to a statute of limitations for commencement of an action on a civil judgment and DOC had not initiated an action against claimant, but was collecting outstanding obligations imposed by the court, which DOC is mandated to collect. DOC points to Wis. Stat. § 301.31, which authorizes DOC to use inmate funds to pay prisoner obligations that have been reduced to judgement and Wis. Stat. § 301.32(1), which authorizes DOC to use inmate funds to pay surcharges, victim restitution, or for the benefit of the prisoner. DOC believes that paying down an inmate's lawful debts is to his benefit. Finally, DOC states that the money collected was not held by DOC for its own benefit but was disbursed to pay his court obligations. Division of Adult Institution Policy 309.45.02 provides that DOC is not responsible for clawing back money already disbursed when an amended JOC is received.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

11. Dale M. Robinson of Fox Lake, Wisconsin claims $892.57 for money deducted from his inmate account by the Department of Corrections. Claimant states that DOC collected money from his account for obligations related to two cases, both of which had already been discharged. He states that he contacted the business office numerous times to notify them the cases were discharged but DOC continued to collect money for these obligations. Claimant points to Division of Adult Institutions Policy 309.45.02, section VII A. 1 and 2 which states that once an inmate informs the DOC Business Office that a case has been discharged the Business Office shall confirm the discharge and then "(v)erify and close appropriate obligations." Claimant believes DOC has no authority to collect on discharged cases. He notes that the parties owed money related to his convictions could have filed civil claims to collect such monies but failed to do so, and the statute of limitations has expired. Claimant requests return of the money collected on these two cases.

DOC recommends denial of this claim. DOC notes that the version of DAI 309.45.02 in effect at the time these collections were made did not require staff to distinguish between discharged and active cases when collecting funds toward court-ordered obligations. In October 2017, DAI 309.45.02 was amended to permit but not require staff to stop collection on some obligations for discharged cases. DOC policy has never mandated that staff stop all collection for discharged cases. DOC points to Wis. Stat. § 301.31, which

authorizes DOC to use inmate funds to pay prisoner obligations that have been reduced to judgement and, Wis. Stat. § 301.32(1), which authorizes DOC to use inmate funds to pay surcharges, victim restitution, or for the benefit of the prisoner. DOC believes that paying off an inmate's debt, even if on a discharged case, is to his benefit. Finally, DOC states that the money collected was not held by DOC for its own benefit but was disbursed to pay his court obligations. DOC acted in conformance with the law and its own policy in this matter and claimant has presented no evidence of staff negligence.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

The Board concludes:

That the following identified claimants are denied:

Robert Schlimm
Michels Corporation
Vitech Systems Group, Inc.
Timothy Smunt
Pastori Balele
Kelley Avery
Mekious D. Bullock, Sr.
Oscar Garner
James R. Harris
Frank Penigar, Jr.
Dale M. Robinson

Dated at Madison, Wisconsin this 30th day of May, 2019.

COREY FINKELMEYER
Chair, Representative of the Attorney General

AMY KASPER
Secretary, Representative of the Secretary of Administration

RYAN NILSESTUEN
Representative of the Governor

LUTHER OLSEN
Senate Finance Committee

ADJOURNMENT

Senator Fitzgerald, with unanimous consent, asked that the Senate stand adjourned until Tuesday, June 11, 2019.

Adjourned.

2:55 P.M.