

STATE OF WISCONSIN

Senate Journal

176 One-Hundred and Sixth Regular Session

THURSDAY, September 28, 2023

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

REPORT OF COMMITTEES

The committee on **Education** reported and recommended:

CHAPMAN, ANNE, of Whitefish Bay, as a Public Representative on the Educational Communications Board, to serve for the term ending May 1, 2025.

Confirmation.

Ayes: 6 - Senators Jagler, Quinn, Stroebel, Cabral-Guevara, Larson and L. Johnson.

Noes: 1 - Senator Nass.

FULCOMER, DR. ERIC, of Oregon, as the Private Schools Representative on the Educational Communications Board, to serve for the term ending May 1, 2027.

Confirmation.

Ayes: 6 - Senators Jagler, Quinn, Stroebel, Cabral-Guevara, Larson and L. Johnson.

Noes: 1 - Senator Nass.

KENNEY, ALYSSA, of Madison, as a Public Representative on the Educational Communications Board, to serve for the term ending May 1, 2027.

Confirmation.

Ayes: 6 - Senators Jagler, Quinn, Stroebel, Cabral-Guevara, Larson and L. Johnson.

Noes: 1 - Senator Nass.

BRAUNSCHWEIG, LEAH, of La Crosse, as a Member on the Professional Standards Council, to serve for the term ending December 1, 2025.

Confirmation.

Ayes: 6 - Senators Jagler, Quinn, Stroebel, Cabral-Guevara, Larson and L. Johnson.

Noes: 1 - Senator Nass.

BUENO, SYDNEY, of Stevens Point, as a Member on the Professional Standards Council, to serve for the term ending December 1, 2025.

Confirmation.

Ayes: 6 - Senators Jagler, Quinn, Stroebel, Cabral-Guevara, Larson and L. Johnson.

Noes: 1 - Senator Nass.

DEPERT, TRISHA, of Merrill, as a Member on the Professional Standards Council, to serve for the term ending December 9, 2025.

Confirmation.

Ayes: 6 - Senators Jagler, Quinn, Stroebel, Cabral-Guevara, Larson and L. Johnson.

Noes: 1 - Senator Nass.

DIMMITT, ERIC, of Milwaukee, as a Member on the Professional Standards Council, to serve for the term ending December 1, 2025.

Confirmation.

Ayes: 6 - Senators Jagler, Quinn, Stroebel, Cabral-Guevara, Larson and L. Johnson.

Noes: 1 - Senator Nass.

ERLER, MARGARET, of Stevens Point, as a Member on the Professional Standards Council, to serve for the term ending December 1, 2025.

Confirmation.

Ayes: 5 - Senators Jagler, Quinn, Cabral-Guevara, Larson and L. Johnson.

Noes: 2 - Senators Nass and Stroebel.

HERZOG, BARBARA, of Oshkosh, as a Member on the Professional Standards Council, to serve for the term ending December 1, 2025.

Confirmation.

Ayes: 6 - Senators Jagler, Quinn, Stroebel, Cabral-Guevara, Larson and L. Johnson.

Noes: 1 - Senator Nass.

HONG, KABBY, of Madison, as a Member on the Professional Standards Council, to serve for the term ending December 1, 2025.

Confirmation.

Ayes: 5 - Senators Jagler, Quinn, Cabral-Guevara, Larson and L. Johnson.

Noes: 2 - Senators Nass and Stroebel.

HORVATH, JULIE, of Beloit, as a Member on the Professional Standards Council, to serve for the term ending December 1, 2025.

Confirmation.

Ayes: 6 - Senators Jagler, Quinn, Stroebel, Cabral-Guevara, Larson and L. Johnson.

Noes: 1 - Senator Nass.

HUBING, BENJAMIN, of Shorewood, as a Member on the Professional Standards Council, to serve for the term ending December 1, 2025.

Confirmation.

Ayes: 5 - Senators Jagler, Quinn, Cabral-Guevara, Larson and L. Johnson.

Noes: 2 - Senators Nass and Stroebel.

KADOW, CURTIS, of New Berlin, as a Member on the Professional Standards Council, to serve for the term ending December 1, 2025.

Confirmation.

Ayes: 5 - Senators Jagler, Quinn, Cabral-Guevara, Larson and L. Johnson.

Noes: 2 - Senators Nass and Stroebel.

LOPEZ, MONICA, of Milwaukee, as a Member on the Professional Standards Council, to serve for the term ending December 1, 2025.

Confirmation.

Ayes: 5 - Senators Jagler, Quinn, Cabral-Guevara, Larson and L. Johnson.

Noes: 2 - Senators Nass and Stroebel.

MEANS, ANTOINETTE, of Milwaukee, as a Member on the Professional Standards Council, to serve for the term ending December 1, 2025.

Confirmation.

Ayes: 6 - Senators Jagler, Quinn, Stroebel, Cabral-Guevara, Larson and L. Johnson.

Noes: 1 - Senator Nass.

MONTERREY, SARAHI, of Waukesha, as a Member on the Professional Standards Council, to serve for the term ending December 1, 2025.

Confirmation.

Ayes: 6 - Senators Jagler, Quinn, Stroebel, Cabral-Guevara, Larson and L. Johnson.

Noes: 1 - Senator Nass.

Senate Bill 395

Relating to: restrictions on the revenue ceiling for school districts.

Passage.

Ayes: 7 - Senators Jagler, Quinn, Nass, Stroebel, Cabral-Guevara, Larson and L. Johnson.

Noes: 0 - None.

JOHN JAGLER

Chairperson

The committee on **Housing, Rural Issues and Forestry** reported and recommended:

HOUSE, DIANE, of De Pere, as a Public Member on the Wisconsin Housing and Economic Development Authority, to serve for the term ending January 1, 2027.

Confirmation.

Ayes: 5 - Senators Quinn, Jagler, Stafsholt, Wirch and Spreitzer.

Noes: 0 - None.

MOORE JR., ELMER, of Milwaukee, as Executive Director of the Wisconsin Housing and Economic Development Authority, to serve for the term ending January 3, 2023.

Confirmation.

Ayes: 5 - Senators Quinn, Jagler, Stafsholt, Wirch and Spreitzer.

Noes: 0 - None.

MOORE JR., ELMER, of Milwaukee, as Executive Director of the Wisconsin Housing and Economic Development Authority, to serve for the term ending January 3, 2025.

Confirmation.

Ayes: 5 - Senators Quinn, Jagler, Stafsholt, Wirch and Spreitzer.

Noes: 0 - None.

RUBOW, RICHARD LEE, of Wausau, as an Assessor on the Real Estate Appraisers Board, to serve for the term ending May 1, 2027.

Confirmation.

Ayes: 5 - Senators Quinn, Jagler, Stafsholt, Wirch and Spreitzer.

Noes: 0 - None.

ROMAINE QUINN

Chairperson

The committee on **Insurance and Small Business** reported and recommended:

Senate Bill 362

Relating to: permitted electronic transmissions under employer-sponsored health insurance policies and plans.

Passage.

Ayes: 5 - Senators Felzkowski, Hutton, Jagler, Taylor and Pfaff.

Noes: 0 - None.

Senate Bill 434

Relating to: repair of complex rehabilitation technology under the Medical Assistance program.

Passage.

Ayes: 5 - Senators Felzkowski, Hutton, Jagler, Taylor and Pfaff.

Noes: 0 - None.

MARY FELZKOWSKI

Chairperson

The committee on **Licensing, Constitution and Federalism** reported and recommended:

ADAMS, CHARLEAN, of Twin Lakes, as a Nursing Home Administrator Representative on the Nursing Home Administrator Examining Board, to serve for the term ending July 1, 2027.

Confirmation.

Ayes: 5 - Senators Jacque, Bradley, Carpenter, Wirch and Knodl.

Noes: 0 - None.

BECKETT, DUTCH WILLIAM VICTOR, of Rice Lake, as a Cosmetologist Representative on the Cosmetology Examining Board, to serve for the term ending July 1, 2027.

Confirmation.

Ayes: 5 - Senators Jacque, Bradley, Carpenter, Wirch and Knodl.

Noes: 0 - None.

BULKOW, BRAD, of Oostburg, as a Physical Therapist Representative on the Physical Therapy Examining Board, to serve for the term ending July 1, 2027.

Confirmation.

Ayes: 5 - Senators Jacque, Bradley, Carpenter, Wirch and Knodl.

Noes: 0 - None.

EHMER, JAIME, of Green Bay, as WTCS Massage/Bodywork Therapist Representative of the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board, to serve for the term ending July 1, 2027.

Confirmation.

Ayes: 5 - Senators Jacque, Bradley, Carpenter, Wirch and Knodl.

Noes: 0 - None.

ERICKSON, TERRANCE, of La Crosse, as a Public Member on the Occupational Therapists Affiliated Credentialing Board, to serve for the term ending July 1, 2027.

Confirmation.

Ayes: 5 - Senators Jacque, Bradley, Carpenter, Wirch and Knodl.

Noes: 0 - None.

GEURTS, JENNIFER, of New Berlin, as a Genetic Counselor on the Genetic Counselors Affiliated Credentialing Board, to serve for the term ending July 1, 2024.

Confirmation.

Ayes: 5 - Senators Jacque, Bradley, Carpenter, Wirch and Knodl.

Noes: 0 - None.

GORDON, JACKIE, of New Richmond, as a Public Member on the Board on Aging and Long Term Care, to serve for the term ending May 1, 2028.

Confirmation.

Ayes: 5 - Senators Jacque, Bradley, Carpenter, Wirch and Knodl.

Noes: 0 - None.

GRZYBOWSKI, JESSICA, of Muskego, as a Genetic Counselor on the Genetic Counselors Affiliated Credentialing Board, to serve for the term ending July 1, 2025.

Confirmation.

Ayes: 5 - Senators Jacque, Bradley, Carpenter, Wirch and Knodl.

Noes: 0 - None.

KENTZ, DR. SCOTT, of Hartford, as an Optometrist Representative on the Optometry Examining Board, to serve for the term ending July 1, 2025.

Confirmation.

Ayes: 5 - Senators Jacque, Bradley, Carpenter, Wirch and Knodl.

Noes: 0 - None.

KUE, AB, of Milwaukee, as a Massage/Bodywork Therapist Representative on the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board, to serve for the term ending July 1, 2027.

Confirmation.

Ayes: 5 - Senators Jacque, Bradley, Carpenter, Wirch and Knodl.

Noes: 0 - None.

LARSON, DAVID L., of DePere, as a Nursing Home Administrator on the Nursing Home Administrator Examining Board, to serve for the term ending July 1, 2023.

Confirmation.

Ayes: 5 - Senators Jacque, Bradley, Carpenter, Wirch and Knodl.

Noes: 0 - None.

LARSON, DAVID, of De Pere, as a Nursing Home Administrator Representative on the Nursing Home Administrator Examining Board, to serve for the term ending July 1, 2027.

Confirmation.

Ayes: 5 - Senators Jacque, Bradley, Carpenter, Wirch and Knodl.

Noes: 0 - None.

LEVONIAN, PETER, of Madison, as a Genetic Counselor on the Genetic Counselors Affiliated Credentialing Board, to serve for the term ending July 1, 2023.

Confirmation.

Ayes: 5 - Senators Jacque, Bradley, Carpenter, Wirch and Knodl.

Noes: 0 - None.

LEVONIAN, PETER, of Madison, as a Genetic Counselor on the Genetic Counselors Affiliated Credentialing Board, to serve for the term ending July 1, 2027.

Confirmation.

Ayes: 5 - Senators Jacque, Bradley, Carpenter, Wirch and Knodl.

Noes: 0 - None.

MCNEIL, LISA, of Sussex, as a Massage/Bodywork Therapist Representative on the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board, to serve for the term ending July 1, 2027.

Confirmation.

Ayes: 5 - Senators Jacque, Bradley, Carpenter, Wirch and Knodl.

Noes: 0 - None.

MULLANE, MICHAEL PATRICK, of Milwaukee, as a Medicine and Surgery Representative on the Genetic Counselors Affiliated Credentialing Board, to serve for the term ending July 1, 2024.

Confirmation.

Ayes: 5 - Senators Jacque, Bradley, Carpenter, Wirch and Knodl.

Noes: 0 - None.

MURIELLO, MICHAEL J., of Brookfield, as a Medicine and Surgery Representative on the Genetic Counselors Affiliated Credentialing Board, to serve for the term ending July 1, 2023.

Confirmation.

Ayes: 5 - Senators Jacque, Bradley, Carpenter, Wirch and Knodl.

Noes: 0 - None.

MURIELLO, DR. MICHAEL, of Brookfield, as a Medicine and Surgery Representative on the Genetic Counselors Affiliated Credentialing Board, to serve for the term ending July 1, 2027.

Confirmation.

Ayes: 5 - Senators Jacque, Bradley, Carpenter, Wirch and Knodl.

Noes: 0 - None.

NOVAK, LAURA, of Madison, as a Massage/Bodywork Therapist Representative on the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board, to serve for the term ending July 1, 2027.

Confirmation.

Ayes: 5 - Senators Jacque, Bradley, Carpenter, Wirch and Knodl.

Noes: 0 - None.

PABST, REBECCA L., of La Crosse, as a Genetic Counselor on the Genetic Counselors Affiliated Credentialing Board, to serve for the term ending July 1, 2025.

Confirmation.

Ayes: 5 - Senators Jacque, Bradley, Carpenter, Wirch and Knodl.

Noes: 0 - None.

PALARSKI, VALERIE A., of Aniwa, as a Public Member on the Board on Aging and Long Term Care, to serve for the term ending May 1, 2026.

Confirmation.

Ayes: 5 - Senators Jacque, Bradley, Carpenter, Wirch and Knodl.

Noes: 0 - None.

PAZAK, KATHLEEN, of Deerfield, as a Speech/Language Pathologist Representative on the Hearing and Speech Examining Board, to serve for the term ending July 1, 2027.

Confirmation.

Ayes: 5 - Senators Jacque, Bradley, Carpenter, Wirch and Knodl.

Noes: 0 - None.

PORTER, EDWARD, of Elm Grove, as a Professional Member on the Cemetery Board, to serve for the term ending July 1, 2027.

Confirmation.

Ayes: 5 - Senators Jacque, Bradley, Carpenter, Wirch and Knodl.

Noes: 0 - None.

TRUDEAU, RAMONA, of Waldo, as a Massage or Bodywork Therapy School Representative on the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board, to serve for the term ending July 1, 2027.

Confirmation.

Ayes: 5 - Senators Jacque, Bradley, Carpenter, Wirch and Knodl.

Noes: 0 - None.

The committee on **Licensing, Constitution and Federalism** reported:

LYNCH-DECOMBHS, DIANE, of Fort Atkinson, as a Nursing Home Administrator Representative on the Nursing Home Administrator Examining Board, to serve for the term ending July 1, 2024.

Confirmation.

Ayes: 2 - Senators Carpenter and Wirch.

Noes: 3 - Senators Jacque, Bradley and Knodl.

ANDRÉ JACQUE

Chairperson

PETITIONS AND COMMUNICATIONS

Pursuant to Senate Rule 17 (5), Representative Joers added as a cosponsor of **Senate Bill 23**.

Pursuant to Senate Rule 17 (5), Representative O'Connor added as a cosponsor of **Senate Bill 121**.

Pursuant to Senate Rule 17 (5), Representative C. Anderson added as a cosponsor of **Senate Bill 400**.

Pursuant to Senate Rule 17 (5), Representative Rettinger added as a cosponsor of **Senate Bill 427**.

Pursuant to Senate Rule 17 (5), Representative Billings added as a cosponsor of **Senate Bill 430**.

**State of Wisconsin
Claims Board**

September 28, 2023

Attached is the report of the State Claims Board covering the claims considered at the September 7, 2023, meeting of 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,
ANNE HANSON
Secretary

STATE OF WISCONSIN CLAIMS BOARD

On September 7, 2023, the State of Wisconsin Claims Board met in the State Capitol Building and via Zoom videoconference to consider the following claims:

Hearings were conducted for the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. Budget Dumpster LLC	Revenue	\$88,518.58
2. Sandra Beulen	Corrections	\$2,414.14

The following claims were decided without hearings:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
3. Brendan Ingenthorn	Corrections	\$274.99
4. Martha Vazquez	Transportation	\$17,064.89
5. Jacquese Harrell, Sr.	Corrections	\$1,750.43
6. Eugene Cherry	Corrections	\$162.39
7. Patrick Fowler	Corrections	\$242.02
8. De'Angelo Carter	Corrections	\$467.60
9. Jennifer Arndt	Natural Resources	\$567.59
10. Corey Benson	Corrections	\$18.65
11. Anthony Holschbach	Health Services	\$1,694.70

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

1. Budget Dumpster, LLC of Westlake, OH claims \$88,518.58 for refund of sales/use taxes levied by DOR. Claimant contracts with third parties to provide waste removal services for customers in Wisconsin. Claimant alleges that it registered for a Wisconsin seller's permit in 2011, but later determined a permit was not necessary because taxable services were not being provided. Claimant did not cancel the permit and did not file sales/use tax returns in Wisconsin. DOR eventually sent estimated assessments in 2018, 2019, and 2020. In June 2021, DOR began levying funds to cover the assessments. Claimant started working with MCE Salt Solutions LLP (a sales and use tax consulting firm) in March 2022. MCE confirmed with DOR that Claimant's services were not taxable. Claimant indicates that the permit was cancelled at that time, and in-process assessments were closed. Claimant sought to recover the funds that had been levied but was advised by DOR those

refunds would not be released until income/franchise returns were filed. Claimant filed and paid the tax returns in July and August 2022, totaling \$23,293.00. At that time, Claimant was not aware that the funds would not be fully refunded. Claimant received refunds in 2022 for the periods of 12/31/19 to 12/31/21, totaling approximately \$12,000, but was notified by DOR that per Wis. Stat. § 77.59(4)(b), the statute of limitations (SOL) had closed for the tax periods ending 3/31/2011 to 9/30/2019. Claimant disagrees and believes the SOL for applying for a refund does not close until June 2023, because the funds were levied (*i.e.*, paid) in June 2021. Claimant holds it had no reason to apply for a refund by September 2020 (the SOL calculated by DOR), because levies did not begin until June 2021. Claimant further believes that the remaining levied AMEX funds should be refunded based on "compromise" authority available to DOR.

DOR recommends this claim be denied. DOR has no record of Claimant applying for or receiving a seller's permit. DOR contends it issued estimated assessments based on survey responses received by Claimant, which led DOR to believe that taxable services were being provided. DOR alleges it sent Claimant approximately 58 letters between June 2018 and March 2022 to obtain additional information but was not contacted by Claimant (through MCE) until March 2022. (Of note, Claimant alleges not to have received any of the 58 letters sent by DOR, and that it may be attributed to mailing issues and/or staff working remotely during that time period.) DOR holds that the two-year SOL runs from the date of assessment, rather than the payment (levy) date. The remaining estimated assessments were issued in 2018 and 2019. Claimant had two years from issuance to apply for a refund. Therefore, Claimant had until September 2020 to apply for a refund on most of the assessments. Lastly, DOR notes that the Tax Appeals Commission has held that the phrase "and paid" is included in the statute (Wis. Stat. § 77.59(4)(b)) to clarify that an assessment must be paid before a refund claim can be filed. DOR holds it has done all in its power and does not have the authority to use fair and equitable relief powers to circumvent the SOL.

The Board defers its decision on this claim at this time in order to obtain additional information from the parties.

2. Sandra Beulen of Oakfield, WI claims \$2,414.14 for vehicle damage incurred due to an accident with a snowplow at Oshkosh Correctional Institution on December 15, 2022. Beulen arrived for work around 7:15 AM while the parking lot was being plowed and pulled into a cleared parking space. Beulen wanted to straighten her vehicle in the stall, so she checked behind her and saw the snowplow two aisles away. She slowly backed up about three feet and when she stopped and put her car into drive to pull forward, the snowplow turned into her aisle and struck her vehicle. In support of her claim, Beulen provides an affidavit from another DOC employee, who states that he saw the plow truck pull wide around the corner and strike Beulen's stopped vehicle. The plow driver called in the accident but then ignored instructions to wait at the scene until someone arrived to take

photos. Beulen swiftly submitted repair estimates as instructed and repeatedly tried to reach Sentry Insurance, the State's insurance adjuster, but they were not responsive. Sentry eventually took Beulen's statement on January 30, 2023, at which time she informed them that her vehicle repair was scheduled for March 6. Sentry told her that the repair cost would be paid and that she would be contacted by an adjuster, which never happened. DOC staff attempted to reach Sentry on Beulen's behalf but were unsuccessful. Towards the end of February, Beulen was informed that the plow driver was refusing to return Sentry's phone calls but that his supervisor was going to intervene to ensure he cooperated with the investigation. Beulen's vehicle was repaired as scheduled on March 6, 2023. Two days later, Sentry notified Beulen that she was 45% responsible for the accident because both vehicles had been moving at the time of the collision. Sentry offered to pay \$560.62 for the repairs, which was half of the "estimate of record" by Sentry's appraisers. Beulen denies that her vehicle was moving at the time of the accident. She believes the plow driver provided a false account of the accident because, having been restricted from driving state vehicles in the past, he might face discipline for another infraction.

DOC believes Beulen has failed to show negligence on the part of the state and recommends denial of this claim. The account of the accident given by both drivers is consistent in most respects. The snowplow driver stated that he tried to stop when he saw Beulen's vehicle back out of the stall, but he was unable to avoid hitting her. DOC notes that the snowplow driver could not have been two lanes over when Beulen backed out of the stall as she alleges. DOC believes Beulen was negligent in failing to look before backing up. The investigation of the accident found that the snowplow driver was not impaired, driving too fast, or distracted, he was simply unable to react quickly enough to avoid an accident when Beulen backed out in front of him.

The Board concludes the claim should be paid in the amount of \$2,414.14 based on equitable principles. The Board further concludes, under authority of Wis. Stat. § 16.007(6m), payment should be made from the Department of Corrections appropriation Wis. Stat. § 20.410 (1)(a).

3. Brendan Ingenthron of Tomah, WI claims \$274.99 for the unreimbursed value of damaged personal property. Ingenthron is an employee at New Lisbon Correctional Institution. On May 30, 2023, an inmate threw a full coffee mug mixture of feces and urine at Ingenthron, which ruined his clothes and caused his glucose monitor to stop working. Ingenthron submitted a Nonrepresented Employee Claim for Reimbursement for Damaged Personal Articles to DOC; however, the department was limited by the State of Wisconsin Compensation plan, which caps reimbursement for personal articles at \$100. Ingenthron requests reimbursement for the remaining value of his clothing and glucose monitor.

DOC supports payment of this claim based on equitable principles. The damage to Ingenthron's personal clothing and glucose monitor was not due to his or another employee's

carelessness. Nor was the damage a result of normal wear and tear while acting within the scope of employment.

The Board concludes the claim should be paid in the amount of \$274.99 based on equitable principles. The Board further concludes, under authority of Wis. Stat. § 16.007(6m), payment should be made from the Department of Corrections appropriation Wis. Stat. § 20.410 (1)(a).

4. Martha Vazquez of Argo, IL claims \$17,064.89 for vehicle damage and injuries sustained in an accident on Interstate 39/90 on August 28, 2022. Vazquez states that she was driving carefully at a reduced speed due to the weather conditions. She alleges that defective highway design created an excessive accumulation of water on the roadway, which caused her vehicle to hydroplane and crash into the concrete barrier. Vazquez contends that the police report blames the accident on accumulation of water on the highway. In addition to vehicle damage, Vazquez suffered permanent injuries to her face, arms, legs, and back, resulting in medical bills and several weeks of lost work.

DOT recommends denial of this claim. The highway was designed and constructed within current standards and did not create unsafe conditions. Between September 2021 and January 2023 there were four crashes within 500 feet of the location of Vazquez's accident. There were no accidents other than Vazquez's on August 28, 2022. DOT disputes Vazquez's characterization of the police report. The report does not say there was accumulation of water on the highway, it states, "the vehicle hydroplaned due to weather conditions losing control of the vehicle." The report notes that the roadway was wet, which is unsurprising given the weather conditions of "rain" and "severe wind." DOT believes Vazquez was either driving too fast for conditions or that some type of mechanical failure caused her to lose control of her vehicle.

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.

5. Jacquese Harrell, Sr. of Boscobel, Wisconsin claims \$1,778.83 for money deducted from Harrell's inmate account and related court fees and costs. Harrell's 2008 Judgment of Conviction (JOC) indicated that restitution was to be paid from "25% of funds." DOC withheld 25% of Harrell's wages for restitution until 2016 when it began withholding 50% from all of his funds, including gifted money sent by his family. Harrell alleges that DOC wrongly applied 2015 Act 355 retroactively to his conviction. Harrell contacted the court, which issued an amended JOC clarifying that restitution should be collected from 25% of his *prison earnings* (as indicated in the sentencing transcript). DOC reduced Harrell's wage deductions to 25% but continued to deduct 50% from gifted funds. After DOC denied his inmate complaint, Harrell petitioned the court, which agreed that DOC should not have withheld 50% of his gifted funds for restitution. DOC stopped those deductions but did not reimburse Harrell for the previous deductions. Harrell alleges

that DOC's actions were arbitrary, illegal, and in violation of court orders. Harrell contends that DOC essentially forced his family members to pay the restitution, which they do not owe, therefore, his family are the victims in this situation. Harrell also alleges that he should be reimbursed for the cost of his court action, because would not have incurred those costs but for DOC's actions.

DOC recommends denial of this claim. DOC denies that the department retroactively applied 2015 Act 355. DOC contends that the deductions were based on Wis. Stat. § 973.20(11)(c), which gave the department authority to set deduction rates for restitution. DOC notes that in recent restitution related decisions, the courts have confirmed DOC's previous authority to set deduction rates for inmate restitution. To the extent that Harrell is correct that DOC should not have withheld 50% from his gifted funds, the department contends that it should not be required to reimburse him for several reasons. First, the money has already been disbursed to Harrell's victims who are entitled to restitution under Wisconsin law. Additionally, because DOC no longer has the money, awarding this claim would essentially result in taxpayers paying Harrell's restitution. DOC stopped making any deductions from Harrell's gifted funds prior to the Court of Appeals decision, which clarified that DOC could deduct 25% from both his wages and gifted funds. DOC notes that the amount DOC could have, but did not deduct from Harrell's gifted funds exceeds the amount allegedly "over-deducted" by DOC. Finally, DOC believes that Harrell is not entitled to reimbursement for filing fees and costs pursuant to Wis. Stat. § 814.25(2)(b), which provides that prisoners are not entitled to costs when they prevail in certiorari actions involving prison or jail conditions.

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.

6. Eugene Cherry of Oshkosh, WI claims \$162.39 for property allegedly mishandled by DOC staff. Cherry was moved from Green Bay Correctional Institution to Oshkosh Correctional Institution on August 10, 2022. Cherry placed his personal property in a basket which GBCI staff picked up the day before his transfer. Cherry alleges that other inmates had no access to his property because he resided in a single cell and inmates had been on Covid-related lockdown with limited movement for the prior two years. When Cherry received his property at OSCI his watch was broken, and many property items were allegedly missing. Cherry believes that GBCI staff improperly discarded his property before his transfer, therefore, the OSCI disallowed property mentioned by DOC is not relevant. Cherry has receipts for the missing property items. Cherry contends that the fact that DOC admits they broke his watch and have paid thousands of dollars for other property claims is proof that DOC mishandled his property.

DOC recommends denial of this claim. The Institution Complaint Examiner determined that there was no evidence

of staff negligence, and it was not even proven that the property was in Cherry's possession immediately prior to his transfer. Although the exact counting of property items sometimes varies between institutions (i.e.: magazines counted as books or magazines, shampoo counted as shampoo or hair product) a review of Cherry's property inventories from before and after the transfer show that he arrived at OSCI with approximately the correct number of items. DOC believes Cherry is attempting to be reimbursed for property that he no longer possessed at the time of his transfer. DOC notes that many of the allegedly missing property items were consumable hygiene products purchased months earlier. Even if Cherry still had those items, many of them would have been destroyed under OSCI property rules regarding open containers and time limits for keeping items after purchase. DOC takes inmate property claims seriously, as evidenced by the fact that it replaced Cherry's watch, which was broken while under staff control. However, the fact that DOC pays some inmate property claims does not mean it should pay claims where there is no proof of DOC responsibility. If the Board finds that some monetary relief is appropriate, DOC notes that used toiletry items and magazines have negligible value and a used book would be worth half of its original value.

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. Patrick Fowler of Boscobel, WI claims \$242.02 for property items allegedly lost by DOC staff at Green Bay Correctional Institution. Fowler was moved to the Restrictive Housing Unit (RHU) on November 3, 2022. He received his property inventory on November 8, 2022, and realized that several property items were missing. He filed an inmate complaint regarding the missing property. After he returned from RHU, Fowler received his property and noticed that some of the property belonged to another inmate, so he filed another inmate complaint. DOC denied both of his complaints. Fowler alleges that DOC mishandled his property and failed to properly investigate his complaints. He notes that an unknown officer took the property from his cell on November 3, but the property was not inventoried until four days later by Officer Cortes. Fowler believes DOC should have reviewed the November 3 video footage from outside of his cell and interviewed the officer who removed his property. Fowler requests reimbursement for the full value of his property.

DOC recommends denial of this claim. The Institution Complaint Examiner determined that Fowler's property was properly handled and that there was no evidence of negligence by DOC staff. DOC staff removed all the property from Fowler's single cell and took it to the property area where it was securely stored until it was inventoried. Fowler's property was placed in a basket before removal from his cell, so individual property items would not have been visible on the video footage from outside the cell. DOC staff inventory inmate property one basketed at a time to

prevents comingling the property of different inmates. Any property Fowler alleges was not his would have been present in his cell when he was moved to RHU, and any property not inventoried by DOC would not have been present.

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. De'Angelo Carter of Waupun, WI claims \$467.60 for several property items allegedly lost by DOC staff at Waupun Correctional Institution between February 25 and March 25, 2022. Carter was moved to the Restrictive Housing Unit (RHU) on February 24, 2022, resulting in limited possession of his personal property items. Disallowed personal property items are packed, inventoried, and stored until the inmate returns to general population. While in RHU, Carter was provided an inventory log detailing his remaining, stored property items. Carter discovered that "a lot" of his items were not accounted for on the log. He filed a complaint via the Inmate Complaint Review System (ICRS) on March 8, 2022, which was investigated and ultimately denied. Upon return to general population, Carter realized that the items were in fact missing from his property. He alleges that he either came to WCI with the items or purchased them while at WCI.

DOC recommends denial of this claim. The Institution Complaint Examiner stated that there was "no evidence that the items he claims are missing were in the cell at the time of the pack up or that these items were ever under staff control. He could have sold, traded, or disposed of the items when they were in his possession." Further, "the process of packing the property and sending it to the Property Department was documented and proper. Recommendation is made for dismissal of the complaint, as there is no indication any staff or staff action caused any perceived loss." If the Board finds that some monetary relief is appropriate, DOC notes that Carter only exhausted his administrative remedies regarding some of the property items and should not be reimbursed where he did not exhaust – *i.e.*, eyeglasses, mesh laundry bag, gym shorts, basketball shoes, African Gold, Coast bar soap, Crest toothpaste, Zest bar soap, thermal bottoms, paper, Ultra Brite. Further, any reimbursement should match the value of items at the time of loss, not the original purchase price or replacement cost.

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. Jennifer Arndt of Lake Geneva, WI claims \$567.59 for damage to vehicle tires allegedly caused by a crosswalk sign in the roadway on South Lake Shore Drive in Lake Geneva, within the boundary of Big Foot Beach State Park ("the Park"), on August 5/6, 2022. Claimant's son, Andrew Arndt, was travelling northbound on South Lake Shore Drive in a vehicle owned by Claimant's fiancé, James Militello. After

hitting a "little bump," tire pressure decreased, and Arndt pulled over. He discovered he hit a rubber mat (with no sign attached) that lay in the middle of the northbound lane with four screws sticking out. The two driver-side tires were damaged. Claimant notes that she and Militello were out of town at the time of the incident, but that she provided Arndt with the cash to repair the damage, which he did at Walmart on August 6. Claimant asserts that while only two tires were damaged, all four were replaced per Walmart's policy. Claimant holds that DNR was negligent in that it failed to maintain a hazard-free roadway.

DNR recommends the claim be denied. DNR maintains crosswalk signs at the two crosswalks across South Lake Shore Drive. Each of the two crosswalks has one sign positioned on the centerline of the roadway. Each day, staff visually confirm the location and correct positioning of the signs. The Park has experienced issues with theft and vandalism of crosswalk signs; as a theft deterrent, DNR uses lag screws to secure the crosswalk signs and mats into the asphalt. DNR is confident the subject crosswalk sign was correctly positioned on the centerline at the end of the day on August 5. On the morning of August 6 or 7, staff observed the sign was missing. The mat was located on the shoulder of the road, with no sign attached. The sign was never located. It is DNR's belief that sometime during the night of August 5, the sign was tampered with and stolen, leaving just the mat, possibly with screws sticking out. This condition was not the result of DNR action or inaction. DNR notes that due to the proximity in time to Labor Day (*i.e.*, when the signs are usually removed), the subject sign was never replaced/reinstalled after this incident. DNR further believes the photographs provided by Claimant (with the sign improperly installed with screws sticking up) are from the other crosswalk in the Park. DNR holds that it exercised appropriate vigilance in its maintenance of the crosswalk sign. If the Board finds that monetary relief is appropriate, DNR recommends no more than \$262.70 – the cost of *two* tires, less the cost of the elective road hazard replacement coverage.

The Board concludes the claim should be paid in the amount of \$262.70 based on equitable principles. The Board further concludes, under authority of Wis. Stat. § 16.007(6m), payment should be made from the Department of Natural Resources appropriation Wis. Stat. § 20.370(1)(ma).

10. Corey Benson of Waupun, WI claims \$18.65 for earbuds allegedly lost by DOC staff. Benson was moved to the Restrictive Housing Unit (RHU) at Waupun Correctional Institution on September 23, 2022, resulting in limited possession of his personal property items. Disallowed personal property items are packed, inventoried, and stored until the inmate returns to general population. On October 12, 2022, Benson was provided his allowable personal property items in RHU, and given an inventory log detailing the remaining, stored property items. Benson discovered his recently purchased earbuds were missing from the inventory log, in addition to other items not subject to this claim. Benson raised the issue with CO Avila, who suggested

Benson complete an Interview/Request Form to have the discrepancy reviewed. Benson indicates that CO Avila confirmed on October 14, 2022, that the earbuds were not located with Benson’s stored property items. Benson returned to general population on December 12, 2022, and received the remainder of his property items, absent the earbuds. Benson alleges he contacted the property department and filed an inmate complaint, exhausting his administrative remedies.

DOC recommends denial of this claim. Benson filed a complaint through the Inmate Complaint Review System (ICRS) on December 21, 2022, which was rejected as untimely. (A complaint must be filed within 14 days after the occurrence giving rise to the complaint.) Benson appealed the rejection to the Warden, who affirmed the rejection. Because the complaint was rejected, the merits were never considered or investigated. Benson claims to have known of his missing earbuds on October 12, but did not file the ICRS complaint until 70 days later; he was 56 days late. DOC notes that Benson’s status in RHU would not prevent him from filing an ICRS complaint. DOC contends that Benson did not properly exhaust his administrative remedies, and that review of the rejected ICRS Complaint is not within the jurisdiction of the Claims Board.

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 Barnes dissenting.*

11. Anthony C. Holschbach of Waupun, WI claims \$1,694.70 for vehicle damage caused by a resident of a Department of Health Services (DHS) facility – Central Wisconsin Center (CWC). Claimant (the presumed owner of the subject vehicle driven by CWC employee Ana Sucely Holschbach) provides a DHS Security Incident Report which indicates that on October 3, 2021, a CWC resident became agitated while on an on-grounds walk and started striking vehicles with his fist. Claimant’s vehicle sustained a dent in the back left quarter panel. Claimant incurred costs from an autobody shop to repair the damage. (Note that the autobody shop estimate lists Claimant as the vehicle owner.)

DHS recommends full payment of this claim. Ms. Holschbach submitted an expense report to be reimbursed for the damage, which was denied due to DHS’s limited ability to reimburse employees for damaged personal articles. DHS

points to the State of Wisconsin Compensation Plan, Section G 2.02, authorized by Wis. Stat. §§ 20.918 and 230.12(1)(dm), which states a reimbursement may not exceed \$100 for any one incident. DHS has no other mechanism to reimburse Claimant or Ms. Holschbach.

The Board concludes the claim should be paid in the amount of \$1,694.70 based on equitable principles. The Board further concludes, under authority of Wis. Stat. § 16.007(6m), payment should be made from the Department of Health Services appropriation Wis. Stat. § 20.435(2)(gk).

The Board concludes:

That payment of the amounts below to the identified claimant from the following statutory appropriations is justified under § 16.007(6)(b).

Sandra Beulen	\$75.00	Wis. Stat. § 20.410(1)(a)
Brendan Ingenthron	\$75.00	Wis. Stat. § 20.410(1)(a)
Jennifer Arndt	\$75.00	Wis. Stat. § 20.370 (1)(ma)
Anthony C. Holschbach	\$75.00	Wis. Stat. § 20.435 (2)(gk)

That the following identified claimants are denied:

- Martha Vazquez
- Jacquese Harrell, Sr.
- Eugene Cherry
- Patrick Fowler
- De’ Angelo Carter
- Corey Benson

That the decision of the following claim is deferred to a later date:

- Budget Dumpster, LLC

Dated at Madison, Wisconsin this 27th day of September, 2023.

R. DUANE HARLOW
Chair, Representative of the Attorney General

ANNE L. HANSON
Secretary, Representative of the Secretary of Administration

ERIC WIMBERGER
Senate Finance Committee

ALEX DALLMAN
Assembly Finance Committee

MEL BARNES
Representative of the Governor