

STATE OF WISCONSIN CLAIMS BOARD

On September 18, 2018, at the State Capitol Building in Madison, Wisconsin, the State of Wisconsin Claims Board considered the following claims:

Hearings were conducted for the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. Beverly Sinople	Transportation	\$558.60
2. Alvernest Kennedy	Corrections	\$227.59
3. Hayward Bait & Bottle Shoppe	Natural Resources	\$786,715.29
4. Northside Enterprises	Natural Resources	\$618,713.49

The following claims were decided without hearings:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
5. Calvin L. Brown, Jr.	Corrections	\$240.47
6. Eric Prunn	Corrections	\$189.88
7. Charles Sheppard	Corrections	\$284.77
8. Charles D. Washington	Corrections	\$148.78

With respect to the claims, the Board finds:

(Decisions are unanimous unless otherwise noted.)

1. **Beverly Sinople** of Wisconsin Dells, Wisconsin, claims \$558.60 for vehicle damage caused by an accident on October 10, 2017. At approximately 4 p.m. on that date, claimant was traveling northbound on Hwy. 90/94 towards Wisconsin Dells. Claimant observed several miles of construction barrels along the shoulders with no highway workers present. She states that between exits 132 and 131, one of the construction barrels suddenly stuck out into her lane. Claimant was traveling in the left lane and traffic was heavy, with a large truck immediately to her right. She was not able to move into the right lane and struck one of the traffic barrels, which damaged the left side mirror on her vehicle. Claimant tried to file a claim with Zenith Tech, the construction contractor, but they told her they had no construction barrels in the location where she reported the accident occurred.

The Department of Transportation recommends denial of this claim. DOT believes claimant is mistaken about the location of this incident and that it most likely occurred closer to mile marker 129. On the date of the claimant's accident, there was a left lane closure at this location, incorporating traffic drums to move traffic to the right. DOT notes that there were signs warning of the lane closure a mile prior to the traffic shift and electronic arrow boards. It appears claimant missed the warning signs for the lane closure. DOT's construction contract with Zenith Tech provides that Zenith Tech is responsible for damages incurred in the construction zone. DOT has directed claimant to pursue a claim against Zenith Tech. DOT believes there was no negligence on the part of any state employee and that this 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.

2. **Alvernest Kennedy** of Milwaukee, Wisconsin, claims \$227.59 for unreimbursed value of property broken by Department of Corrections staff. Claimant was an inmate at the Wisconsin Secure Program Facility on April 12, 2017. He alleges that a DOC officer deliberately pushed property off a shelf in his cell in retaliation for an earlier complaint made by claimant. His TV, eyeglasses, bowl, and headphones were broken. Claimant filed an inmate complaint.

DOC concluded that the officer's actions were accidental, not deliberate. DOC reimbursed claimant the full value of his headphones and bowl, but depreciated the value of his eyeglasses and TV, resulting in a reimbursement of \$58.70. Claimant states that the purchase price of his TV was \$199 and alleges that he recently had the TV completely refurbished for \$169, so it was like new. The purchase price of his glasses was \$78.41. Claimant states that he told DOC he wanted to have the TV and glasses repaired or replaced but DOC refused. Claimant notes that DOC's own policies provide that they can "repair or replace" property damaged by DOC. Claimant disputes DOC's assertion that he voluntarily "accepted" the reduced reimbursement. Claimant states that DOC made their decision and credited the money to his account without giving him the opportunity to accept or reject the payment. Claimant believes that because DOC admitted that their officer broke his property, he should be reimbursed for the full value of that property.

DOC believes claimant has already been properly reimbursed and is not entitled to any additional money. DOC's investigation determined that the property damage was accidental, not deliberate. DOC requested receipts from claimant for the damaged property. He provided receipts for his bowl, eyeglasses, and headphones. Pursuant to DAI 310.00.03, DOC applied the appropriate depreciation schedule to these items and reimbursed the full value of the bowl and headphones, and a depreciated value (\$36) for the glasses, which were five years old. Claimant did not have a receipt for the TV. DOC determined the TV was manufactured in 2007 and estimated a purchase price of \$138.20 based on the price of similar TVs purchased by DOC. DOC then applied the 10-year depreciation schedule to arrive at a reimbursement value of \$13.82. DOC notes that policy DAI 303.72.01 provides that the agency may reimburse, repair or replace damaged property. DOC states that there was no replacement TV available and the agency believed it was unreasonable to pay shipping costs to attempt to repair a 10-year-old TV. Finally, DOC believes it is inappropriate for claimant to now ask for more money when he already accepted payment for the depreciated value of his property.

The Board concludes the claim should be paid in the reduced amount of \$128.09 based on equitable principles. The Board further concludes, under authority of § 16.007 (6m), Stats., payment should be made from the Department of Corrections appropriation § 20.410 (1)(a), Stats.

3. Hayward Bait and Bottle Shoppe of Hayward, Wisconsin, claims \$786,715.29 for damages related to an alleged breach of a grant agreement by the Department of Natural Resources. Claimant was awarded a \$125,000 grant under the Wisconsin Walleye Initiative program in March 2014. The program was created to increase capacity for fish farms to raise walleye for stocking state waters. The grant awarded money for farms to increase their fish-raising capacity and directed DNR to provide eggs to the farms, so they could produce walleye fingerlings. Claimant notes that Section 4 of the grant agreement required DNR to work closely with grantees to ensure the successful raising of the fingerlings. Claimant alleges that DNR failed to work closely with them and gave them vague and inaccurate information regarding how to raise the walleye. Claimant also states that DNR did not provide eggs in 2014 until late in the season and that the quality of the eggs was poor. As a result of the poor egg quality and late start, claimant was unable to meet its 2014 fingerling production goal and alleges that other hatcheries had problems as well. DNR allowed claimant to adjust its 2014 production goal and amended the grant agreement, adjusting the fingerling production goals for 2015 and 2016. Claimant alleges that the eggs provided by DNR in 2015 were also of poor quality and that claimant and other hatcheries had problems with them. The problems were exacerbated by weather conditions and claimant was unable to meet its 2015 production goal. In early April 2016, DNR sent claimant an Intent to Terminate Grant letter due to claimant's failure to produce the number of fingerlings outlined in the grant agreement. The letter provided claimant a month to reply before DNR would make a final determination regarding termination of the grant. Claimant requested eggs for 2016 on April 8, 2016, however, DNR refused to provide eggs to claimant. DNR did not issue a final decision terminating the grant agreement until January 2017. Claimant believes that DNR's failure to provide eggs for the 2016 season, as well as its failure to work cooperatively with claimant as required under the grant agreement, constituted a breach of the agreement well before the DNR decision to terminate

the agreement in 2017. Claimant requested a Chapter 227 judicial review of DNR's decision and in June 2018, the circuit court found that DNR had improperly terminated the grant agreement. Claimant requests reimbursement for damages in the form of out-of-pocket improvement costs, lost profits for 2016-18, estimated lost profits for future years, attorney's fees, and other costs.

DNR recommends denial of this claim. In accepting the March 2014 grant, claimant committed to two endeavors: infrastructure improvements to expand capacity, and production of a predetermined quantity of walleye fingerlings for potential purchase by DNR. The fingerling production goals set forth in the agreement were 20,000 in 2014, 30,000 in 2015, and 50,000 in 2016. Claimant's actual 2014 production was 3,173 fingerlings. DNR agreed to amend the agreement and adjusted the production goals to: 3,173 in 2014, 20,000 in 2015, 36,000 in 2016, and 40,827 in 2017. Claimant again failed to meet its production goal in 2015, providing only 5,556 fingerlings. As a result, DNR found that claimant had substantially failed to perform its commitments under the grant agreement. DNR notified claimant of its intent to terminate the agreement and gave them 30 days to respond. Claimant's response alleged that the production failures were due to factors beyond its control. DNR did not find this argument to be compelling, terminated the grant agreement, and sought repayment of the grant award. DNR disputes claimant's allegation that the department failed to cooperate pursuant to the agreement. DNR fully complied with its commitments under the grant agreement and worked with claimant to maximize their success, even to the point of amending the agreement twice in their favor. DNR also disagrees with claimant's assertion that the eggs DNR provided were of poor quality. A test batch of the 2014 eggs experienced a hatch rate of 71%, an indicator of excellent quality. Although the 2015 test batch experienced a lower hatch rate of 33%, DNR compensated by providing claimant with three times the number of eggs it would normally have provided. Even at this lower hatch rate, the large number of eggs provided should have produced far more fingerlings than needed to meet claimant's 2015 production goal, had they been properly raised. DNR notes that section 4.B.12 of the agreement required claimant to notify DNR within two weeks of discovering it would be unable to meet production goals. Claimant did not notify DNR until October 1, 2014 and September 30, 2015. DNR notes that production issues caused by factors such as egg quality and weather would have been apparent far earlier than the dates on which claimant provided notice. Claimant should have been aware of the need to notify DNR long before the dates it actually did so, and therefore was in breach of the agreement. DNR believes the state owes no debt to claimant. Claimant has already been compensated for its infrastructure improvements per the terms of the agreement. In addition, neither the original grant agreement nor the amended agreement guaranteed claimant that DNR would purchase its fingerlings, they only required claimant to make certain quantities of fingerlings available for potential purchase. Finally, DNR notes that it is actively appealing the circuit court decision related to this case.

The Board concludes 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. Northside Enterprises of Black Creek, Wisconsin, claims \$618,713.49 for damages related to an alleged breach of a grant agreement by the Department of Natural Resources. Claimant was awarded a \$136,344 grant under the Wisconsin Walleye Initiative program in March 2014. The program was created to increase capacity for fish farms to raise walleye for stocking state waters. The grant awarded money for farms to increase their fish-raising capacity and directed DNR to provide eggs to the farms, so they could produce walleye fingerlings. Claimant states that DNR did not provide eggs in 2014 until late in the season, that the quality of the eggs was poor and that other hatcheries, including DNR, had problems with the eggs. As a result of the poor egg quality and late start, claimant was unable to deliver any walleye to DNR in 2014. After discussions and emails between DNR and claimant, claimant obtained an amendment to its grant agreement, changing its walleye production goals from 2014-16 to 2015-17. In March 2015, claimant requested 40,000 fingerlings and 350,000 eggs from DNR for the 2015 season. Due to cold weather and a late spawn season, DNR could not provide eggs and directed claimant to an alternate source, Butternut Lake. Claimant

obtained eggs from Butternut Lake in April 2015. DNR never provided the requested 40,000 fingerlings. Claimant and other grant recipients reported problems with the eggs from Butternut Lake, with eggs dying and a poor hatch rate. DNR also experienced problems with the control group of Butternut Lake eggs but was unable to provide any other eggs to claimant. Claimant sold a total of 1,341 Lake Michigan strain walleye to DNR but DNR refused to purchase an additional 4,000 unspecified strain fish because it advised claimant it had already met its quotas. In early April 2016, DNR sent claimant an Intent to Terminate Grant letter due to claimant's failure to produce the number of fingerlings outlined in the grant agreement. The letter provided claimant a month to reply before DNR would make a final determination regarding termination of the grant. On April 18, 2016, while the grant agreement was still in effect, DNR informed claimant it would not provide eggs for the 2016 season. DNR did not issue a final decision terminating the grant agreement until January 2017. Claimant believes that DNR's failure to provide eggs for the 2016 season, as well as its failure to work cooperatively with claimant as required under the grant agreement, constituted a breach of the agreement well before the DNR decision to terminate the agreement in 2017. Claimant requested a Chapter 227 judicial review of DNR's decision and in June 2018, the circuit court found that DNR had improperly terminated the grant agreement. Claimant requests reimbursement for damages in the form of out-of-pocket improvement costs, lost profits for 2016-18, estimated lost profits for future years, attorney's fees, and other costs.

DNR recommends denial of this claim. In accepting the March 2014 grant, claimant committed to two endeavors: infrastructure improvements to expand capacity, and production of a predetermined quantity of walleye fingerlings for potential purchase by DNR. The grant agreement provided claimant would make available 40,000 walleye fingerlings in the years 2014, 2015, and 2016. In 2014 claimant failed to make available any fish. DNR agreed to amend the agreement to extend the grant by an additional year and shift each of the annual commitments to the subsequent year. Claimant again failed to meet its production goal in 2015, providing only 1,341 fingerlings of the strain which it contracted to produce. As a result, DNR found that claimant had substantially failed to perform its commitments under the grant agreement. DNR notified claimant of its intent to terminate the agreement and gave it 30 days to respond. Claimant's response alleged that the production failures were due to factors beyond its control. DNR did not find this argument to be compelling, terminated the grant agreement, and sought repayment of the grant award. DNR disputes claimant's allegation that the department failed to cooperate pursuant to the agreement. DNR fully complied with its commitments under the grant agreement and worked with claimant to maximize their success. DNR also disagrees with claimant's assertion that the eggs DNR provided were of poor quality. A test batch of the 2014 eggs provided to claimant experienced an "eye-up" of 60%, which suggests claimant should have been able to produce about 162,000 fish with proper rearing practices. While the DNR's 2015 test batch did fail, DNR made extra effort to facilitate an alternate source of eggs for claimant. Claimant did not notify DNR that it was unsuccessful using eggs from this source until August 2015 and DNR is not aware of any failures by others who used eggs from this source. The fact that the majority of other grantees were substantially or fully successful in meeting their grant obligations in 2014 and 2015 indicates that claimant's failure to do so was not due to factors out of its control as alleged. DNR notes that section 4.B.12 of the agreement required claimant to notify DNR within two weeks of discovering it would be unable to meet production goals. Claimant did not notify DNR until September 18, 2015, that it would not meet its 2015 goal. DNR notes that production issues caused by factors such as egg quality and weather would have been apparent far earlier than the date which claimant provided notice. Claimant should have been aware of the need to notify DNR long before it actually did so, and therefore was in breach of the agreement. DNR believes the state owes no debt to claimant. Claimant has already been compensated for its infrastructure improvements per the terms of the agreement. In addition, neither the original grant agreement nor the amended agreement guaranteed claimant that DNR would purchase its fingerlings, they only required claimant to make certain quantities of fingerlings available for potential purchase. Finally, DNR notes that it is actively appealing the circuit court decision related to this case.

The Board concludes 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.]*

5. Calvin L. Brown, Jr. of Stanley, Wisconsin, claims \$240.47 for refund of money which he believes was inappropriately taken from his inmate account. On November 4, 2015, claimant's case number 00CF5762 was discharged. On November 30, 2015, pursuant to Department of Corrections DAI policy, claimant wrote the business office to notify them that this case was discharged and to stop any deductions related to this case. In early December 2015, the business office acknowledged that the case was discharged and indicated they were stopping the deductions. In July 2016, claimant again wrote to the business office because they had restarted deductions for case 00CF5762. The business office responded, "Unsure of why it was reactivated. It has been unactivated" and the deductions stopped. In November 2016, claimant again wrote the business office requesting reimbursement of the money that had been taken when they restarted the deductions. On December 16, 2016, the business office replied that they had a right to make deductions for a discharged case and that they would continue making deductions for case 00CF5762. In February 2018, claimant filed a complaint with the ICRS system regarding the continued deductions for this case. In response to his complaint, the deductions were stopped, and claimant was refunded \$99.21. However, DOC refused to refund \$240.47 of the money they had deducted, because that money had already been distributed to victims. Claimant alleges that DOC was negligent in continuing to deduct monies for a discharged case. He points to DAI policy 309.45.02 VII. Discharged Cases, which states that when an inmate notifies DOC that a case has been discharged, "the Business Office shall...Verify and close appropriate obligations." Claimant notified the business office multiple times that the case had been discharged. DOC staff confirmed the discharge and stopped the deductions, but then started them again for no reason, in violation of DAI policy. Claimant believes DOC has no jurisdiction or authority to act as a collection agency on behalf of crime victims. Claimant notes that the only reason the victims would be "revictimized" as DOC alleges, is due to DOC's own negligence in making improper deductions for a discharged case.

DOC recommends denial of this claim. DOC points to the fact that DAI policy 309.45.02 VII. Discharged Cases states, "the DOC may elect to stop the collection of some outstanding obligations..." DOC believes this language is clearly discretionary and therefore there was no negligence on the part of the state. DOC notes that it notified claimant in December 2016 that deductions for this case would continue. Although DOC chose to stop the deductions in response to the ICRS complaint filed by claimant, it would have revictimized the claimant's victims to require reimbursement of money already disbursed to them. Finally, DOC notes that Wis. Stat. § 301.31 authorizes DOC to use inmate funds to pay obligations of a prisoner that have been reduced to judgement. 2015 Act 355 amended Wis. Stat. § 301.32 to expressly authorize DOC to use a prisoner's money to pay applicable surcharges or victim restitution, or otherwise for the benefit of the prisoner. Paying down a prisoner's lawful debts is clearly to his benefit.

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. Eric Prunn of Boscobel, Wisconsin, claims \$189.88 for value of television allegedly broken by Department of Corrections staff. In December 2017, DOC staff performed a shakedown of multiple cells at the Wisconsin Secure Program Facility. Claimant states that when he returned to his cell after the shakedown, his belongings were strewn all over the floor in disarray. It took him some time to straighten up his cell. When he examined his TV, he found the coaxial cable connector on the back of the unit was broken. Claimant states that the TV was only five months old and was in perfect working condition prior to the shakedown. He states that he immediately notified DOC staff about the broken TV, and an hour after that, staff came and confiscated the television. Claimant alleges that approximately one hour later, Officer Wetter told claimant that he had spoken to the officer who searched his cell and that

officer had stated, "if he broke the TV, he was sorry." Claimant filed a complaint with the Inmate Complaint Review System. He believes that DOC did not do a real investigation of the incident, but simply took the word of DOC staff, who denied both breaking the TV and apologizing for it. His ICRS claim and appeal were denied. Claimant notes that he has absolutely no reason to break his own TV, which was practically new. He states that he is an easy-going, rule-following inmate who is just trying to quietly serve out his sentence. He requests reimbursement for his broken TV.

DOC recommends denial of this claim. A DOC investigation found no evidence that DOC staff damaged claimant's television. When questioned, staff reported that the TV was in working order after the shakedown and denied apologizing to claimant for any alleged damage. DOC notes that claimant did not notify staff of the damaged TV until three hours after the shakedown. DOC believes claimant has failed to provide any evidence that DOC staff damaged his television.

The Board strongly urges DOC to adopt a policy of verifying the functionality of an inmate's electronics before and after each cell search and documenting that verification on a form signed by the inmate. The Board concludes the claim should be paid in the reduced amount of \$94.94 based on equitable principles. The Board further concludes, under authority of § 16.007 (6m), Stats., payment should be made from the Department of Corrections appropriation § 20.410 (1)(a), Stats.

7. Charles Sheppard of Boscobel, Wisconsin, claims \$284.77 for value of publications confiscated and destroyed by Department of Corrections staff at the Wisconsin Secure Program Facility. Claimant states that in June 2016, DOC staff took all of his books and magazines during an institution shakedown, because he was allegedly over the allowed limit for publications. Claimant states that he immediately told DOC staff that he was going to file an inmate complaint through the ICRS process and appeal the complaint if he lost. His initial complaint was denied, and he filed his appeal on July 25, 2016. However, DOC destroyed his publications on July 27, 2016, before his appeal was complete. Claimant believes that destruction of his property prior to his completion of the ICRS process was in violation of Wisconsin's Administrative Code. Claimant points to the fact that the ICRS is a two-step process and he had given DOC notice that he would pursue an appeal. Claimant also states that he was not given written notice of the destruction of his property pursuant to Wis. Admin. Code DOC 309.020(d)(3). He believes this rule provides that he must be given notice prior to the destruction of his property and allowed a chance to mail out the property. Claimant alleges that DOC staff destroyed his property early in retaliation for a previous grievance he filed.

DOC recommends denial of this claim. Claimant was found to be over the limit for publications during an institution shakedown. DOC staff reviewed the confiscated publications during the ICRS investigation and found that 4 were not permitted in the institution, 16 were not properly identified as belonging to claimant per DOC rules, and 7 were damaged or altered and therefore considered contraband. Four publications were returned to claimant and the remainder were destroyed. DOC notes that it is required to give inmates notice *within* 10 days of property destruction not *prior to* destruction, as claimant asserts. The appropriate notice was provided to claimant. Finally, DOC notes that on appeal, staff found that the destruction of the 27 publications was upheld and no reimbursement to claimant was warranted because he was over the limit for publications.

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. Charles D. Washington of Stanley, Wisconsin, claims \$148.78 for monies deducted from his inmate account which allegedly had been previously paid. Claimant states that prior to October 2016, the Department of Corrections' accounting system (WITS) showed he owed \$1,118.25 in obligations for case no. 04CF3405. In late 2016, DOC switched to a new accounting system (WICS). Both the old and new systems showed claimant had paid \$523.91 towards this obligation, however, upon implementation of the WICS system, his balance due increased, even though the system showed an overpayment of \$148.76. Claimant believes DOC

has not accounted for \$353.75 of the money deducted from his account. He requests reimbursement of either \$353.75 or \$148.76, whichever the board feels is more appropriate.

During the transfer to a new inmate accounting system, WICS, claimant's court-ordered obligations for case no. 04CF3405 were adjusted to account for surcharges previously not included under the old accounting system (WITS). As WICS was implemented, \$491.99 in payments made by claimant was applied to three of his cases, including 04CF3405. The distribution of his payments has been explained to claimant and he is incorrect that DOC has not accounted for \$353.75. In 2005, an incorrect JOC was issued for case no. 04CF3405. The JOC stated that one of claimant's victims, R.K., was due "4100.00" when it should have said "\$100.00." DOC received a corrected JOC in October 2016 and made the change to claimant's accounts, resulting in \$148.76 overpayment. By the time DOC received the corrected JOC, the overpaid amount had already been disbursed to R.K. Pursuant to DAI Policy 309.45.02, "If an inmate receives an amended JOC, DAI is not responsible to seek reimbursement from the entity who received the funds." DOC properly deducted and paid out these funds based on the JOC received from the court and promptly corrected claimant's obligations when the amended JOC was 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.

The Board concludes:

That the following identified claimants are denied:

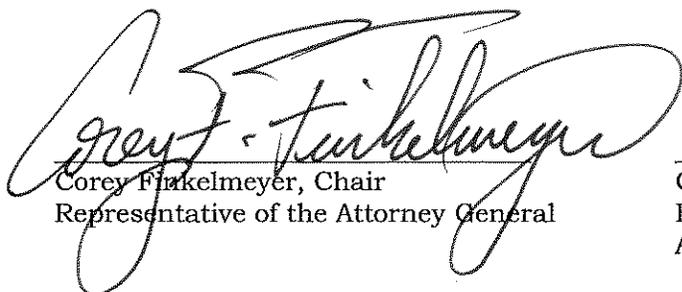
- Beverly Sinople
- Hayward Bait & Bottle Shoppe
- Northside Enterprises
- Calvin L. Brown, Jr.
- Charles Sheppard
- Charles D. Washington

That payment of the amount below to the identified claimant from the following statutory appropriation is justified under § 16.007(6)(b), Stats.

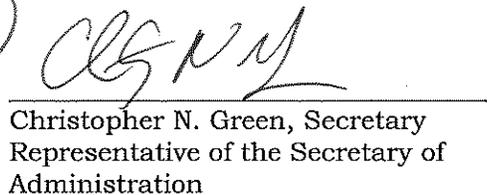
Alvernest Kennedy	\$128.09	§ 20.410 (1)(a), Stats.
Eric Prunn	\$94.94	§ 20.410 (1)(a), Stats.

That pursuant to the request of the Department of Children & Families, the May 22, 2018, Claims Board decision for the claim of Shanquil Bey is amended to show payment from the Department of Children & Families appropriation, § 20.437 (3)(pz), Stats.

Dated at Madison, Wisconsin this 2nd day of OCTOBER, 2018



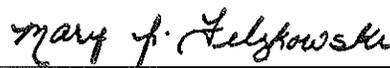
Corey Finkelmeyer, Chair
Representative of the Attorney General



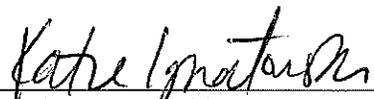
Christopher N. Green, Secretary
Representative of the Secretary of Administration



Luther Olsen
Senate Finance Committee



Mary Felzkowski
Assembly Finance Committee



Katie Ignatowski
Representative of the Governor