



## 1997 ASSEMBLY BILL 540

September 29, 1997 - Introduced by Representatives GARD, OTT and RYBA, cosponsored by Senators SHIBILSKI and ZIEN. Referred to Joint committee on Finance.

1     **AN ACT relating to:** the expenditure of \$845,399 from the general fund for  
2             payment of claims against the state made by 11 claimants in connection with  
3             fees paid to the department of natural resources for review of hydroelectric  
4             facility proposals.

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### *Analysis by the Legislative Reference Bureau*

This bill directs expenditure of \$845,399 from the general fund in payment of claims made by 11 claimants against the department of natural resources (DNR). The claimants operate hydroelectric facilities in this state and were required to notify the federal energy regulatory commission of their intent to apply for and to file applications for license renewals with the commission in order to continue to operate their facilities. Federal law [16 USC 808 (c) (1)] requires applicants to consult with the state fish and wildlife agencies (DNR in Wisconsin) and to conduct studies with them. Federal law [16 USC 797 (e)] also requires the commission to consider environmental factors in relicensing facilities. Under s. 23.42, 1989 stats., DNR charged fees to the claimants for its costs in reviewing and evaluating their notifications and applications to the commission. In *Wisconsin Valley Improvement Company et al. v. Meyer*, 910 F. Supp. 1375 (W.D. Wis., 1995), a U.S. district court held that s. 23.42, stats., is invalid because it is preempted by federal law. The claimants then filed claims with the claims board for refund of the fees that they paid to DNR

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under s. 23.42, stats., from 1989 to 1995. The claims board recommended denial of the claims on September 11, 1996 (see 1995 *Senate Journal*, pp. 892-894).

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1. Claims against the state.** There is directed to be expended from  
2 the appropriation under section 20.505 (4) (d) of the statutes \$845,399 in payment  
3 of the following claims against the state, made by the following claimants, to refund  
4 to them fees paid to the department of natural resources under section 23.42 of the  
5 statutes from 1989 to 1995 for review of their notifications of intent to apply for and  
6 applications for renewal of hydropower licenses issued by the federal energy  
7 regulatory commission. Acceptance of these payments releases this state, its  
8 officers, employes and agents from any further liability resulting from these  
9 payments. Payments shall be made to the following claimants in the following  
10 amounts:

<u>Claimant</u>	<u>Amount</u>
11           Consolidated Water Power Company, Wisconsin Rapids, Wisconsin	\$ 38,343
12           Fraser Papers, Inc., f/k/a Flambeau Paper Corporation, Park Falls, 13           Wisconsin	233,999
14           Kimberly Clark Tissue Company, Marinette, Wisconsin	4,089
15           Nekoosa Papers, Inc., Port Edwards, Wisconsin	21,284
16           Niagara of Wisconsin, Wisconsin Rapids, Wisconsin	38,047
17           Northern States Power Company, Eau Claire, Wisconsin	98,117
18           Weyerhaeuser Paper Company, Rothschild, Wisconsin	4,843
19           Wisconsin Power and Light Company, Madison, Wisconsin	87,250

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1	Wisconsin Public Service Corporation, Green Bay, Wisconsin	164,101
2	Wisconsin River Power Company, Wisconsin Rapids, Wisconsin	76,463
3	Wisconsin Valley Improvement Company, Wausau, Wisconsin	78,863
4	<b>(END)</b>	