

JOURNAL OF THE SENATE [April 28, 1981]

STATE OF WISCONSIN

Senate Journal

Eighty-Fifth Regular Session

Tuesday, April 28, 1981.

10:00 A.M.

The senate met.

The senate was called to order by the president of the senate.

The roll was called and the following senators answered to their names:

Senators Adelman, Bablitch, Berger, Bidwell, Braun, Chilsen, Engeleiter, Flynn, Frank, George, Goyke, Hanaway, Harnisch, Harsdorf, Johnston, Kleczka, Kreul, Krueger, Lasee, Lorge, Lorman, McCallum, Maurer, Moody, Offner, Opitz, Risser, Roshell, Strohl, Theno, Thompson and Van Sistine -- 32.

Absent -- Senator Cullen -- 1.

Absent with leave -- None.

The senate stood for the prayer which was offered by Reverend Richard E. Pritchard, Heritage Congregational Church, Madison.

The senate remained standing and Senator Harsdorf led the senate in the pledge of allegiance to the flag of the United States of America.

INTRODUCTION OF BILLS

Read first time and referred:

Senate Bill 329

Relating to nonprofit sickness care organizations and granting rule-making authority.

By Legislative Council.

To committee on Human Services.

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Senate Bill 330

Relating to the sale of coins and stamps on premises holding retail beer licenses.

By Senator Chilsen.

To committee on Aging, Business and Financial Institutions and Transportation.

Senate Bill 331

Relating to state aid to school districts which pay tuition for pupils enrolled outside the school district.

By Senator Theno; cosponsored by Representative Murray.

To committee on Education and State Institutions.

Senate Bill 332

Relating to the right of an employe to copy personnel records and creating a penalty.

By Senator Cullen.

To committee on Labor, Government, Veterans Affairs and Tourism.

Senate Bill 333

Relating to state building commission approval of certain debt obligations.

By Senator Cullen.

To Joint Survey committee on Debt Management.

Senate Bill 334

Relating to removal of wharves, piers, structures and obstructions in navigable waters.

By Senator Cullen; cosponsored by Representative Porter.

To Joint Survey committee on Tax Exemptions.

Senate Bill 335

Relating to a revision of the obscenity law and the penalties for its violation.

By Senators Chilsen and Johnston.

To committee on Human Services.

Senate Bill 336

Relating to the speed limit for trucks on county trunk highways.

By Senator Chilsen; cosponsored by Representative Vanderperren.

To committee on Aging, Business and Financial Institutions and Transportation.

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Senate Bill 337

Relating to requiring retail service stations to furnish pressurized air to customers.

By Senators Strohl and Berger; cosponsored by Representatives Tuczynski, Behnke, Jackamonis and Menos.

To committee on Energy.

Senate Bill 338

Relating to vacancies in nominations of candidates for certain offices.

By Senators Van Sistine, Kreul, Offner and Johnston; cosponsored by Representatives Vanderperren, D. Travis, Potter, Swoboda, Otte and Jackamonis.

To committee on Labor, Government, Veterans Affairs and Tourism.

Senate Bill 339

Relating to defenses to an action based on a defective product.

By Senator Berger.

To committee on Aging, Business and Financial Institutions and Transportation.

Senate Bill 340

Relating to product liability actions by worker's compensation recipients and payors against 3rd parties.

By Senator Berger.

To committee on Aging, Business and Financial Institutions and Transportation.

Senate Bill 341

Relating to warnings and instructions in a product liability action.

By Senator Berger.

To committee on Aging, Business and Financial Institutions and Transportation.

Senate Bill 342

Relating to instalment payment of money judgments in product liability actions.

By Senator Berger.

To committee on Aging, Business and Financial Institutions and Transportation.

Senate Bill 343

Relating to the duty of a manufacturer or seller to warn concerning the use of a product.

By Senator Berger.

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To committee on Aging, Business and Financial Institutions and Transportation.

Senate Bill 344

Relating to creating a defense, limiting liability and excluding evidence in an action for damages caused by a defective product.

By Senator Berger.

To committee on Judiciary and Consumer Affairs.

Senate Bill 345

Relating to the statute of limitations in product liability actions.

By Senator Berger.

To committee on Judiciary and Consumer Affairs.

Senate Bill 346

Relating to contingent fees and pleadings in a product liability action.

By Senator Berger.

To committee on Judiciary and Consumer Affairs.

Senate Bill 347

Relating to limitation on certain damages in a product liability action.

By Senator Berger.

To committee on Judiciary and Consumer Affairs.

Senate Bill 348

Relating to punitive damages in a product liability action.

By Senator Berger.

To committee on Judiciary and Consumer Affairs.

Senate Bill 349

Relating to the statutes of limitations for actions to recover damages caused by a product.

By Senator Berger.

To committee on Judiciary and Consumer Affairs.

Senate Bill 350

Relating to burden of proof and defenses in strict liability actions.

By Senator Berger.

To committee on Judiciary and Consumer Affairs.

Senator Adelman asked unanimous consent that **Senate Bills 339, 340, 341, 342 and 343** be withdrawn from committee on Aging, Business and Financial Institutions and Transportation and referred to committee on Judiciary and Consumer Affairs.

Senator Bablitch objected.

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By request of Senator Bablitch, with unanimous consent, **Senate Bills 339, 340, 341, 342 and 343** were withdrawn from committee on Aging, Business and Financial Institutions and Transportation and referred to committee on Senate Organization.

COMMITTEE REPORTS

The committee on Agriculture and Natural Resources reports and recommends for introduction:

Senate Bill 351

Relating to Brule river protection, granting rule-making authority and creating a penalty.

By request of Department of Natural Resources and the Brule River Sportsmens Club

Introduction:

Ayes, 5 -- Senators Harnisch, Strohl, Thompson, Krueger and Opitz;

Noes, 0 -- None.

Read first time and referred to committee on Agriculture and Natural Resources.

Senate Bill 352

Relating to deposit procedures in natural resources forfeiture actions.

By request of Department of Natural Resources.

Introduction:

Ayes, 5 -- Senators Harnisch, Strohl, Thompson, Krueger and Opitz;

Noes, 0 -- None.

Read first time and referred to committee on Agriculture and Natural Resources.

THOMAS W. HARNISCH
Chair

The committee on Senate Organization reports and recommends:

Assembly Bill 233

An Act to authorize release of \$11,857.25 from the general fund for payment of 2 claims against the state made by Diane Merfeld, John Hotchkiss, Sr. and Geraldine Skaff.

Concurrence:

Ayes, 4 -- Senators Risser, Bablitch, Chilsen and Hanaway;

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Noes, 0 -- None.

FRED A. RISSER
Chair

The committee on Judiciary and Consumer Affairs reports and recommends:

Senate Bill 245

Relating to petitions and distribution of political literature in the common areas of shopping centers which are open to the public.

Introduction and adoption of senate substitute amendment 1:

Ayes, 3 -- Senators Adelman, Braun and George;

Noes, 1 -- Senator Johnston.

Passage as amended:

Ayes, 3 -- Senators Adelman, Braun and George;

Noes, 1 -- Senator Johnston.

LYNN S. ADELMAN
Chair

The joint committee for Review of Administrative Rules reports and recommends:

Senate Bill 64

Relating to creation of a legislative administrative rules bureau and making an appropriation.

Passage:

Ayes, 6 -- Senators Berger, Goyke, Harnisch, George and Kreul, Representative Crawford;

Noes, 4 -- Representatives Rogers, Wagner, Helbach and Thompson.

DAVID G. BERGER
Co-Chair

WILLIAM J. ROGERS
Co-Chair

The committee on Labor, Government, Veterans Affairs and Tourism reports and recommends:

Senate Bill 1

Relating to eliminating the budget review process.

Passage:

Ayes, 2 -- Senators Van Sistine and Kreul;

Noes, 1 -- Senator Cullen.

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Senate Bill 71

Relating to fair-share and maintenance of membership agreements under the state employment labor relations act.

Passage:

Ayes, 3 -- Senators Van Sistine, Cullen and Kreul;

Noes, 0 -- None.

Senate Bill 131

Relating to notary public bonds.

Passage:

Ayes, 3 -- Senators Van Sistine, Cullen and Kreul;

Noes, 0 -- None.

JEROME VAN SISTINE

Chair

PETITIONS AND COMMUNICATIONS

State of Wisconsin
Department of State

April 21, 1981.

To the Honorable, the Senate:

I have the honor to transmit to you the following information pursuant to s. 13.685(8):

Yours very truly,
VEL PHILLIPS
Secretary of State

Lobbyist's name, address, telephone number; principal's name, address, telephone number.

Anderson, Norman C., 25 West Main St., Madison, WI 53703 (608) 255-7277; John Leske d/b/a Leske's Liquor Locker, c/o Norman C. Anderson, 25 West Main St., Madison, WI 53703 (608) 255-7277; 5, 6, 10, 11; Wisconsin Occupational Therapy Assn., 1442 North Farwell Ave., Milwaukee, WI 53202 (414) 244-2411, Ext. #482; 11.

Conta, Dennis J., 2611 North Wahl Ave., Milwaukee, WI 53211 (414) 276-6575; Planned Parenthood Assn. of Wisconsin, Inc., 1135 West State St., Milwaukee, WI 53233 (414) 271-8116; 7, 9, 11, 12, 19; 129, 148, 161, 164.

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Hanson, Thomas S., 23 North Pinckney St., Madison, WI 53703 (608) 256-5299; Air Transport Assn., 1709 New York Ave., Washington, D.C. 20036 (202) 626-4186; 23.

Kay, Robert J., Geisler & Kay, S.C., 433 West Washington Ave., Madison, WI 53703 (608) 257-4401; Assn. of Wisconsin Snowmobile Clubs, Inc., P.O. Box #1029, Neenah, WI 54916 (414) 725-9133; 17, 18, 23, 26; 140, 170, 176, 178.

Kerrigan, Michael, The Tobacco Institute, 1875 I St., N.W., Ste. #800, Washington, D.C. 20006 (202) 457-4800; The Tobacco Institute, 1875 I St., N.W., Ste. #800, Washington, D.C. 20006 (202) 457-4800; 1, 3, 10, 11, 21.

Ripple, Mary Anne, 660 East Mason St., Room #401, Milwaukee, WI 53202 (414) 271-5900; Ad Hoc Committee of Wisconsin Premium Payment Companies, c/o Martin D. Haber, AFCO, Ten Hanover St., New York, NY 10004 (212) 797-1850; 14.

Sicula, Paul E., 212 West Wisconsin Ave., Milwaukee, WI 53203 (414) 271-8100; Mr. Donald Gittelson, 3841 North Kedzie Ave., Chicago, IL 60632 (312) 267-9214; 3, 6, 12.

Williamson, Mark C., Geisler & Kay, S.C., 433 West Washington Ave., Madison, WI 53703 (608) 257-4401; Assn. of Wisconsin Snowmobile Clubs, Inc., P.O. Box #1029, Neenah, WI 54916 (414) 725-9133; 17, 18, 23, 26; 140, 170, 176, 178.

State of Wisconsin
Claims Board

April 21, 1981.

Don Schneider
Senate Chief Clerk
State Capitol
Madison, Wisconsin

Dear Mr. Schneider:

Enclosed is the report of the State Claims Board covering claims heard on April 6, 1981.

The amounts recommended for payment under \$1000 on claims included in this report have, under the provisions of s. 16.007, Wisconsin Statutes, been paid directly by the Board.

The Board is preparing the bill(s) on the recommended award(s) over \$1,000, and will submit such to the Joint Finance Committee for legislative introduction.

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This report is for the information of the Legislature. The Board would appreciate your acceptance and spreading of it upon the Journal to inform the members of the Legislature.

Sincerely,
EDWARD D. MAIN
Secretary

BEFORE THE
CLAIMS BOARD OF WISCONSIN

The Claims Board conducted hearings at the State Capitol Building, Madison, Wisconsin, on April 6, 1981, upon the following claims:

Claimant	Amount
Lori Dixon	\$62.00
Joseph Schaeve	1,276.80
Lonnie Johnson	5,000.00
Fred Brown	30,000.00
Richard Mianecki	3,238.02
Jane Travis	220.00
Douglas Shefelbine	11,400.00
Triple H Farms, Inc.	6,836.65
LaVonne Krause	1,078.77
Robert Dishmond	1,500.00
Darlene Lutz	1,200.00
Guy Rondeau	312.05
Lyle Bringgold	5,597.79
James Galle	652.08
Danny Herwick	2,052.78
Edward Dittbrenner	11,958.00
Bruce Potter	732.44

In addition, the following claims were considered and decided without hearings:

Philip Lindeman	\$133.50
Robert Lamont	400.00
Leorman Konitzer	111.50
Wis. Power and Light Co.	1,161.57
Willie Sykes	176.00
Mrs. Lewis Hobbs	436.80
Gene Guetzkow	800.00
Thomas Nelson	190.00
Richard Aderman	42.00
Polk-Burnett Electric Coop	249.57

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George Behselich	540.00
Security Mutual Casualty Co.	1,998.00
Gregory Nirtaut	137.89
Ken Bosinske	157.95
Jeffrey Weborg	100.00
Robert Johnsen	379.96
Marvin & Vivian Gattie	2,188.90
Alan Galkowski	122.66
Margaret Greger	49.08
Cepek Construction Co.	205.97
Robert Carothers	41.59
Rebecca Nelson	55.00
Claire Haight	1,442.84
Holtzman Co.	2,000.00
E. David Larsen	641.82
Gerald Tatera	100,000.00

THE BOARD FINDS

1. Lori Dixon of Madison, Wisconsin, claims \$62.00 for the loss of several personal items, allegedly stolen from her office at Room 415 Southeast, State Capitol, during the weekend of January 23, 1981. The Board concludes there is an insufficient showing of negligence on the part of the state, its officers, agents, or employes, and this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

2. Joseph Schaeve on Madison, Wisconsin, claim \$1276.80 for payment of 92 hours he worked from June 30, to July 24, 1980 to complete a decision on a nursing home hearing he held on May 12 and 13, 1980 for the Department of Health and Social Services. Claimant was employed by the Division of Natural Resources Hearings but was loaned to the Department of Health and Social Services during fiscal year 1980. Claimant was scheduled to be laid off by the Department of Health and Social Services on June 28, 1980 and was notified by letter that he was under no obligation to complete his decision on the nursing home hearing after June 28, 1980, as there were no funds available to pay him for such services. However, claimant, based on his own professional ethics as an attorney, felt compelled to finish the assignment originally given to him. The Department of Health and Social Services had neither the funds nor authority to contract for claimant's services after his layoff on June 28, 1980. The Board concludes the claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles. (Member Main abstains)

3. Lonnie Johnson of Milwaukee, Wisconsin, claims \$5,000.00 for pain and suffering due to injuries he suffered on or about May 11, 1979 when he was struck in the back by a state owned and operated truck at the Kettle Moraine Correctional Institute, where he was an inmate. Claimant was reimbursed for medical costs and lost wages for the time he was off work due to the injury by the Correctional Institute. Generally, this Board does not award claims for general damages related to pain and suffering. The Board concludes the claim is not for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

4. Fred Brown of Milwaukee, Wisconsin, claims \$30,000.00 for lost wages due to a re-injury to his back when he slipped and fell on a wet floor in April, 1976, at the Waupun State Prison, where he was institutionalized. Claimant had previously injured the same part of his back in a workmen's compensation claim in 1971. Claimant alleges he was unable to work from 1973 to 1975 due to the back injury and again from 1978 through the present time due to re-injury to his back. From October, 1975 through 1977 claimant was institutionalized. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents, or employes, and this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

5. Richard Mianiecki of De Pere, Wisconsin, claims \$3,238.02 for attorney fees and expenses he incurred because he was allegedly advised by his employer, the Wisconsin State Reformatory, to obtain legal counsel in the matter of processing his claim under s. 66.191, Wis Stats. Claimant further alleges that such advice was improper as similar claims have been resolved without the advice of legal counsel. The employes at the Reformatory deny telling claimant to hire an attorney. The Board believes it is each claimant's decision whether or not to hire legal counsel. The Board concludes the claim is not one for which the state is legally liable, nor one which the should assume and pay based on equitable principles.

6. Jane Travis of Onalaska, Wisconsin, claims \$220.00 for damages to her home in May, 1980, caused by yellow shafted flickers a migratory bird protected by federal law. Claimant's homeowner's insurance does not cover the cost of the damages. Part of the claim is for materials and labor to build a wire frame to keep the birds away from claimant's home in the future. Even though legal title to all wild animals in Wisconsin is vested in the state pursuant to s. 29.02(1), Stats., mere ownership does not create legal liability for damages done by wild animals. There is no showing of negligence on the part of the state, it officers, agents, or employes, and the Board concludes

this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles. (Member Roberts dissents)

7. Douglas Shefelbine of Holmen, Wisconsin, claim \$11,400.00 for deer damages to his apple orchard during the summer of 1980, plus an unspecified amount of materials to construct a deer proof fence. Section 29.595, Stats., previously authorized the Department of Natural Resources to pay damages caused by deer to crops on agricultural lands, provided that proper notice was given to the Department of Natural Resources. That same statute authorized the Department to provide funds to be used to purchase materials to construct deer proof fences. However, the statutory provision enabling payment has been repealed by the state legislature by Chapter 34, Laws of 1979, which provides that no payment can be made under the deer damage program for damages occurring after March 31, 1980. The authority for payment of the cost of deer proof fences was also repealed. Therefore, the Board feels is cannot honor claims of this type and concludes this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles. (Member Roberts dissents)

8. Robert Hoffa, Sr., of Triple H Farms, Inc., Coloma, Wisconsin, claims \$6,836.65 for deer damage to his field corn and green bean crops which occurred between June 15 and November 15, 1980. Section 29.595, Stats., previously authorized the Department of Natural Resources to pay damages caused to crops by deer on agricultural lands provided that proper notice was given to the Department. However, the statutory provision enabling payment has been repealed by the state legislature by Chapter 34, Laws of 1979, which provides that no payment can be made under the deer damage program for damages occurring after March 31, 1980. Therefore, the Board feels is cannot honor claims of this type, and concludes this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

9. La Vonne Krause of Middleton, Wisconsin, claims \$1,078.77 for reimbursement of 58.8% of \$349.27 of a basic Education Opportunity Grant; 58.8% or \$588.00 of a Wisconsin state loan; \$41.50 in medical expenses; and \$100.00 lost wages for allegedly being incorrectly informed of the results of a throat culture taken on February 29, 1980, when she telephoned the University of Wisconsin Hospital's emergency room on or about March 1, 1980. There is no record of such a call. Claimant alleges, that because of her illness, she was forced to drop 10 of the 17 credit hours for which she was registered at the University of Wisconsin-Madison. A nurse practitioner attempted to notify claimant by telephone of her test

results from March 3 to March 14, 1980. Such attempts were unsuccessful and a letter was written to claimant on March 14, 1980, advising her to seek treatment for her throat. The Board concludes there is an insufficient showing on the part of the state, its officers, agents or employes to find causal negligence, and that this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

10. Robert Dishmond claims \$1,500.00 for medical expenses and repairs to his automobile relating to an accident on February 24, 1979, in University of Wisconsin-Madison parking lot 18. A University of Wisconsin metermaid informed claimant he could not park in lot 18 after he had entered the lot. The accident report in this matter indicates claimant was informed to leave the parking lot by the same drive he entered; however, he imprudently made an abrupt U-turn and pulled in front of the metermaid, sustaining damages to his car. The Board concludes there is an insufficient showing of negligence on the part of the state, its officers, agents, or employes, and this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

11. Darlene Lutz claims \$1,200.00 for medical expenses she incurred relating to an automobile accident. Claimant was a passenger in an automobile driven by Robert Dishmond at the time he and a state employe collided in University of Wisconsin-Madison parking lot 18 on February 24, 1979. A University of Wisconsin metermaid informed Mr. Dishmond he could not park in lot 18 after he had enter the lot. The accident report in this matter indicates Mr. Dishmond was informed to leave the parking lot by the same drive he entered. The metermaid indicates that Mr. Dishmond made an abrupt U-turn and pulled in front of her. The Board concludes there is an insufficient showing of negligence on the part of the state, it officers, agents or employes, and this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

12. Guy Rondeau, Solid Waste Manager, Brown County Solid Waste Department, Green Bay, Wisconsin, claims \$312.05 for the replacement cost of a portable dictation unit which he alleges was stolen. Claimant left the unit in a classroom during lunch hour while attending a program at the University of Wisconsin Extension, Wisconsin Center Building on December 11, 1980. The Board concludes the should be paid, based on equitable principles, by check issued to the brown County Solid Waste Department, the owner of the unit.

13. - 19. The following claimants make claims for sheep destroyed because of scrapie, a disease for which there is no vaccine

or test to detect its presence, and which is always fatal to the animal. Scrapie was diagnosed in three flocks in Polk County in June of 1980. Tracing of sales and purchases disclosed 25 additional flocks which had been directly exposed, which includes the claimants listed below. The 28 flocks were condemned, appraised, slaughtered and indemnified by the USDA at two-thirds of the appraised value to a maximum indemnity of \$300 per animal. The State of Wisconsin has never had an indemnification program for scrapie. A petition to the joint committee on Finance was filed asking for special state indemnity funds. The joint committee on Finance met October 23, 1980 and approved the expenditure of \$61,200 for scrapie indemnity funds. All of the claims listed below have been processed for both USDA and state indemnity payments.

13. Lyle Bringgold of Milltown, Wisconsin, owned a flock of 178 sheep and received \$35,586.66 federal indemnity monies and \$12,195.54 state indemnity monies for a total recovered value of 87.5%. The balance of \$5,597.79 is the amount claimed, which was not paid by either the state or federal government. The Board concludes this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

14. James Galle of Luck, Wisconsin, owned a flock of 42 sheep and received \$3,900.62 federal indemnity monies and \$1,298.23 state indemnity monies for a total recovered value of 88.9%. The balance of \$652.09 is the amount claimed, which was not paid by either the federal or state government. The Board concludes this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

15. Danny Herwick of Luck, Wisconsin, owned a flock of 174 sheep and received \$12,616.67 federal indemnity monies and \$4,255.55 state indemnity monies for a total recovered value of 87.1%. The balance of \$2,502.78 is the amount claimed, which was not paid by either the state or federal government. The Board concludes this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

16. Edward Dittbrenner of Cumberland, Wisconsin, owned a flock of 370 sheep and received \$84,648.47 federal indemnity monies and \$30,365.74 state indemnity monies for a total recovered value of 84.6%. An amount of \$11,958.00 is the amount claimed, which was not paid by either the state or federal government. The Board concludes this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

17. Bruce Potter of Frederic, Wisconsin, owned 53 sheep and received \$4,380.00 federal indemnity monies and \$1,460.00 state monies for a total recovered value of 88.9%. An amount of \$732.44 is the amount claimed, which was not paid by either the federal or state government. The Board concludes this claim is not one for which the state is legally liable, nor one which the state should assume or pay based on equitable principles.

18. Phillip Lindeman of Shell Lake, Wisconsin, owned 4 sheep and received \$800.00 federal indemnity monies and \$266.66 state indemnity monies for a total recovered value of 88.9%. An amount of \$133.50 is the amount claimed, which was not paid by either the state or federal government. The Board concludes this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

19. Robert Lamont of Turtle Lake, Wisconsin, owned a flock of 33 sheep and received \$2,400.00 federal indemnity monies and \$800.00 state indemnity monies for a total recovered value of 88.9%. The balance of \$400.00 is the amount claimed, which was not paid by either the state or federal government. The Board concludes this claim is one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

20. Leorman Konitzer of Neenah, Wisconsin, claims \$111.50 for the replacement cost of his jacket which was burned by a cigarette on March 6, 1979, at the Waupun State Prison, where claimant was employed. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents, or employes, and this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

21. Wisconsin Power and Light Company of Tomah, Wisconsin, claims \$1,161.57 for reimbursement of electrical services provided to the Department of Natural Resources ranger station at Friendship, Wisconsin, from September 1978 through August 1980. Claimant underbilled the Department of Natural Resources for that period due to an error in calibrating the electric meter. The Board concludes that based on equitable principles the state in good conscience should assume and pay this claim in the reduced amount of \$1,000.00.

22. Willie Sykes of Milwaukee, Wisconsin, claims \$176.00 for the replacement of a missing cufflink and his vest and pants which were damaged at the laundry while he was a patient at the Winnebago Mental Health Institute in August, 1980. There is no evidence of negligence on the part of the state, its officers, agents, or employes, and the Board concludes this claim is not one for which the

state is legally liable, nor one which the state should assume and pay based on equitable principles.

23. Mrs. Lewis Hobbs of Oakfield, Wisconsin, claim \$374.40 for the cost of repairs to her vehicle and \$62.40 for the cost of a rental car for four days relating to an accident which occurred on May 20, 1980 when the front gate at the Taycheedah Correctional Institute closed before claimant had driven through. Claimant drove through the front gate at Taycheedah before receiving an acknowledgement to her arrival announcement. The Board concludes this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

24. Gene Guetzkow of Madison, Wisconsin, claims \$800.00 for automobile damages on June 25, 1980, on Interstate 94 between Lake Mills and Madison, when he hit a deer. There is no statutory provision for payment of damages caused to automobiles under the circumstances of this case. The Board concludes this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

25. Thomas Nelson of Racine, Wisconsin, claims \$190.00 for the loss of his hunting dog on October 24, 1980, on Department of Natural Resources land in the Bong Recreational area. Claimant was pheasant hunting with his dog at the time the dog fell through an open manhole and a storm sewer. Because of the extent of the injuries, the dog was put to sleep. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents, or employes, and this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

26. Richard Aderman of Shawano, Wisconsin, claims \$42.00 as the replacement cost of his eyeglasses. On October 23, 1980, while a labor-trainee for the Department of Natural Resources, claimant was working in a wooded area of falling trees and brush. Claimant placed his glasses in his pocket and while walking toward his truck a branch became unstuck and swung out and hit him in the side, breaking his glasses. The Board concludes the claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

27. Polk-Burnett Electric Cooperative of Centuria, Wisconsin, claims \$249.57 for damages to an underground electric cable located in Southern Polk County on August 25, 1980. The Department of Natural Resources, while digging holes for fence posts, damaged the cable. The Board concludes the claim should be paid, based on equitable principles.

28. George Behselich of Pittsville, Wisconsin, claims \$540.00 for damages to his six acres of spring wheat from September, 1980 through October, 1980, caused by Canadian geese. The statutory provision enabling payment of animal damage claims has been repealed by the state legislature. Therefore, the Board feels it cannot honor claims of this type and concludes this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

29. Security Mutual Casualty Company of Chicago, Illinois, claims \$1,998.00 subrogation damages. Its insured's vehicle was damaged on July 21, 1980 when a tree fell on the vehicle while they were camping at Devil's Lake State Campground. Based on a long-standing policy of this Board not to honor subrogation claims, the Board concludes this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

30. Gregory Nirtaut of Westhaven, Illinois, claims \$137.89 for the cost of renting a car to drive from Devil's Lake State Park to his home in Illinois. On July 20, 1980 while camping at Devil's Lake State Campground, a tree fell in claimant's car. Claimant was reimbursed by his insurance company for the repairs to his vehicle, but not for the cost of the rental car. The Board concludes this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

31. Kenneth Bosinske of Tomahawk, Wisconsin, claims \$157.95 for the reimbursement cost of his automobile windshield which was broken by a stone which allegedly fell off the back of a Department of Natural Resources truck he was following on September 10, 1980. The Board concludes there is an insufficient showing of negligence on the part of the state, its officers, agents, or employees, and this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

32. Jeffrey Weborg of Ellison Bay, Wisconsin, claims \$100.00 for the value of two five gallon buckets containing white fish livers and white fish roe that were seized as evidence by the Department of Natural Resources conservation wardens. Claimant is a commercial fisherman. On October 14, 1980, law enforcement officials asked for claimant's identification and attempted to inspect fish in his possession under the authority of s. 29.33(6), Stats. Claimant refused to produce identification, removed the fish from his boat, and left in his boat. The fish roe and livers left behind were seized as evidence by the wardens in an attempt to determine the size and species of the fish. The Board concludes there is an insufficient showing of negligence on the part of the state, its officers, agents, or

employees, and this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

33. Robert Johnsen of Solon Springs, Wisconsin, claims \$379.96 for alleged damages to his fishing boat on July 6, 1980 when Department of Natural Resources conservation wardens boarded his boat to check his fishing licenses and registration, at a location approximately four miles out from Superior entry in Wisconsin waters on Lake Superior. Claimant alleges the Department of Natural Resources' boat collided with his boat amidship as they approached to pick up the warden that had boarded his boat. The Department wardens deny any physical contact between the boats. The Board concludes there has been insufficient showing of negligence on the part of the state, its officers, agents, or employees, and this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

34. Marvin and Vivian Gattie of Sturtevant, Wisconsin, claim \$2,188.90 for damages to their lawn in the fall of 1978, which was flooded as a result of movement of Department of Transportation highway construction equipment over their drain tile. Water ponded on claimant's property, destroying their lawn, plantings, and trees. The Board concludes that based on equitable principles the state in good conscience should assume and pay this claim in the reduced amount of \$1,000.00.

35. Alan Galkowski of Genesee Depot, Wisconsin, claims \$122.66 for the cost of repairs to his telephone and power lines which were damaged on June 25, 1980 when a branch from a dead tree, located on STH 83 right of way, fell taking down claimant's power lines and destroying his meter box. The Board concludes this claim should be paid, based on equitable principles.

36. Margaret Greger of Sheboygan, Wisconsin, claims \$49.08 for medical expenses incurred as a result of a fall in front of the Babcock Hall on the University of Wisconsin-Madison campus on October 9, 1980. Claimant tripped on a small stone and fell, fracturing her arm. While a stray piece of gravel may have been thrown onto the walk, it does not appear that the University had knowledge of the condition or failed to take appropriate corrective action. The Board concludes this claim is not one for which the state is legally liable, but concludes claimant's unreimbursed medical expenses in the amount of \$49.08 be paid, based on equitable principles.

37. Cepek Construction Company of Madison, Wisconsin, claims \$205.97 for repairs to their vehicle which was damaged while parked at their construction site at 660 North Park Street, on the University of Wisconsin-Madison campus, on July 28, 1980. A second vehicle,

owned by the University and operated by a University employe, backed into the claimant's parked vehicle damaging the left bumper. The Board concludes the claim should be paid, based on equitable principles, by check issued jointly to the claimant and Schappe Pontiac, Inc.

38. Robert Carothers of Milwaukee, Wisconsin, claims \$41.59 for the replacement of his jacket which was damaged when, in an attempt to jump start a University of Wisconsin-Milwaukee automobile, the battery exploded and acid splashed on his coat on December 13, 1977. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents, or employes, and this claim is not one which the state should assume and pay based on equitable principles.

39. Rebecca Nelson of Woodridge, Illinois, claims \$55.00 for replacement cost of her three-piece suit which was damaged by an adhesive name tag she wore while attending a seminar sponsored by the University of Wisconsin-Extension on September 25, 1980. Claimant placed the tag on the vest of her suit and upon removal, the vest tore. The Board concludes this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

40. Claire Haight of Eau Claire, Wisconsin, claims \$1,442.84 for medical expenses she incurred as a result of a fall while attending an alumni reunion at the University on Wisconsin-Stout in the Commons building on July 31, 1980. The Commons Building has a sunken lounge on the first floor which is reached by descending three steps from the adjacent corridor. Claimant was walking parallel to the sunken lounge along the corridor when she fell to the bottom of the steps and cracked her knee cap. The hall area bordering the sunken lounge was well-lit and visibility was good. It appears that claimant's accident was caused by her own failure to observe the steps to the sunken lounge. The Board concludes there is an insufficient showing of negligence on the part of the state, its officers, agents, or employes, and this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

41. Evan Holtzman of Madison, Wisconsin, claims \$2,000.00 for a refund of property taxes he has paid since 1960 on 11 acres on land. Claimant originally purchased 359 acres of land in the Town of Dunn, Dane County; however, he recently learned that approximately 11 of those 359 acres is occupied by Goodland Park Road and claimant, therefore, requests a refund of the property taxes he has paid on those 11 acres since 1960. The Board concludes this

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claim is not one which the state should assume and pay based on equitable principles.

42. E. David Larsen of Madison, Wisconsin, claims \$641.82 for payment of compensatory time he earned in November, 1977, when serving as Deputy Secretary to Michael Early at the Department of Veterans' Affairs. Claimant had earned 38 hours of compensatory time at the direction and approval of Michael Early. The Board concludes the claim should be paid, based on equitable principles.

43. Gerald Tatera of Milwaukee, Wisconsin, claims \$100,000.00 for medical and dental expenses, pain, suffering, and disability he incurred as a patient of the Winnebago Mental Health Institute on June 16, 1976. Claimant alleges the assault occurred due to the fact that the patient was not under the close supervision of the staff of the Institute at the time the incident occurred. It appears that medical expenses in the amount of \$798.22 were reimbursed through Blue Cross/Blue Shield. As a matter of policy, this Board does not award claims for general damages related to pain and suffering. The Board concludes claimant's unreimbursed dental expenses in the amount of \$578.00 be paid, based on equitable principles.

THE BOARD CONCLUDES

1. The claims of the following claimants should be denied:

Lori Dixon	Robert Lamont
Joseph Schaeve	Leorman Konitzer
Lonnie Johnson	Willie Sykes
Fred Brown	Mrs. Lewis Hobbs
Richard Miannecki	Gene Guetzkow
Jane Travis	Thomas Nelson
Douglas Shefelbine	Richard Aderman
Triple H Farms, Inc.	George Behselich
LaVonne Krause	Security Mutual Casualty Co.
Robert Dishmond	Gregory Nirtaut
Darlene Lutz	Ken Bosinske
Lyle Bringgold	Jeffrey Weborg
James Galle	Robert Johnsen
Danny Herwick	Robert Carothers
Edward Dittbrenner	Rebecca Nelson
Bruce Potter	Claire Haight
Philip Lindeman	Holtzman Co.

2. Payment of the following amounts to the following claimants is justified under s.16.007, Stats:

Guy Rondeau	\$312.05
Polk-Burnett Electric Coop	249.57

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Marvin & Vivian Gattie	1,000.00
Alan Galkowski	122.66
Margaret Greger	49.08
Cepek Construction Co.	205.97
E. David Larsen	641.82
Gerald Tatera	578.00
Wisconsin Power & Light Co.	1,000.00

Dated at Madison, Wisconsin this 21st day of April, 1981.

GERALD D. KLECZKA
Senate Finance Committee

VIRGIL D. ROBERTS
Assembly Finance Committee

LAURIE ANN McCALLUM
Representative of Governor

EDWARD D. MAIN
Representative of Secretary of
Administration

WARD L. JOHNSON
Representative of Attorney
General

By request of Senator Bablitch, with unanimous consent, the rules were suspended and the calendar of April 28, 1981 was taken up at this time.

CALENDAR OF APRIL 28

By request of Senator Bablitch, with unanimous consent, the appointments were considered enmasse.

BIDDICK, ROGER D., of Livingston, as a member of the Board of Vocational, Technical and Adult Education, to succeed Harvey Dueholm, to serve for the term ending May 1, 1983.
Read.

BORGWARDT, REVEREND ROBERT, of Madison, as a member of the Ethics Board, to succeed Annrita Lardy, to serve for the term ending May 1, 1985.
Read.

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HECKRODT, FRANK H., of Appleton, as a member of the University of Wisconsin System Board of Regents, to succeed Arthur Debardeleben, to serve for the term ending May 1, 1988.
Read.

KRUSCHKE, RICHARD E., of New Richmond, as a member of the Board of Vocational, Technical and Adult Education, to succeed Elaine Bina, to serve for the term ending May 1, 1987.
Read.

LEVIN KAY W., of Cleveland, as a member of the Judicial Commission, to succeed herself, to serve a three year term to expire on August 1, 1982.
Read.

MORGAN, JAMES R., of Madison, as a member of the Ethics Board, to succeed Pastor Brest, to serve for the term ending May 1, 1983.
Read.

SCHILLING, PAUL R., of Milwaukee, as a member of the University of Wisconsin System Board of Regents, to succeed Mary Walter, to serve for the term ending May 1, 1988.
Read.

ULLSVIK, BJARNE R., of Platteville, as a member of the Judicial Commission, to succeed Warren Carrier, to serve out the three year unexpired term of Mr. Carrier which will expire on August 1, 1980 and for a subsequent three year term to expire on August 1, 1983.
Read.

The question was: Shall the appointments be confirmed?

The ayes and noes were required and the vote was: ayes, 31; noes, 1; absent or not voting, 1; as follows:

Ayes -- Senators Adelman, Bablitch, Bidwell, Braun, Chilsen, Engeleiter, Flynn, Frank, George, Goyke, Hanaway, Harnisch, Harsdorf, Johnston, Kleczka, Kreul, Krueger, Lasee, Lorge, Lorman, McCallum, Maurer, Moody, Offner, Opitz, Risser, Roshell, Strohl, Theno, Thompson and Van Sistine -- 31.

Noes -- Senator Berger -- 1.

Absent or not voting -- Senator Cullen -- 1.

So the appointments were confirmed.

SENATE CLEARINGHOUSE ORDERS

Clearinghouse Rule 80-126

A RULE to create Ch. HEA 7, relating to the Wisconsin health education loan program.

Submitted by Higher Educational Aids Board.

Report received from agency, April 27, 1981.

Referred to committee on Education and State Institutions, April 28, 1981.

The committee on Insurance and Utilities reports and recommends:

Clearinghouse Rule 80-165

A RULE to create Ins 6.80, relating to record retention requirements for insurers and insurance intermediaries.

No action taken.

Clearinghouse Rule 81-40

AN ORDER to amend Ins 17.28 (6) (intro.) and (6) (i); and to repeal and recreate Ins 17.28 (6) (e), relating to fees for health care providers participating in the patients compensation fund.

No action taken.

KURT A. FRANK

Chair

CALENDAR OF APRIL 28

Senate Bill 18

Relating to limiting recoveries of property taxes that are held to be void from the first assessment.

Read a second time.

Ordered to a third reading.

By request of Senator Bablitch, with unanimous consent, the bill was considered for final action at this time.

Senate Bill 18

Read a third time and passed.

Senate Bill 19

Relating to disallowing interest on overassessments for delays caused by taxpayers.

Read a second time.

The question was: Adoption of senate amendment 1?

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Adopted.

Ordered to a third reading.

By request of Senator Bablitch, with unanimous consent, the bill was considered for final action at this time.

Senate Bill 19

Read a third time and passed.

Senate Bill 21

Relating to adding the property appraiser (land) to the board of assessors in Milwaukee.

Read a second time.

Ordered to a third reading.

By request of Senator Bablitch, with unanimous consent, the bill was considered for final action at this time.

Senate Bill 21

Read a third time and passed.

Senate Bill 53

Relating to allowing appeals to the tax appeals commission of reductions by the secretary of revenue of the interest rate on delinquent income and franchise taxes.

Read a second time.

The question was: Adoption of senate amendment 1?

Adopted.

By request of Senator Kleczka, with unanimous consent, **Senate Bill 53** was referred to the joint committee on Finance.

By request of Senator Kleczka, with unanimous consent, **Senate Bill 53** was withdrawn from the joint committee on Finance and considered for action at this time.

Read a second time.

Ordered to a third reading.

By request of Senator Bablitch, with unanimous consent, the bill was considered for final action at this time.

Senate Bill 53

Read a third time and passed.

Senate Bill 58

Relating to records of city engineers.

Read a second time.

The question was: Adoption of senate substitute amendment 1?

Adopted.

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Ordered to a third reading.

By request of Senator Bablitch, with unanimous consent, the bill was considered for final action at this time.

Senate Bill 58

Read a third time and passed.

Senate Bill 181

Relating to service of process on nonresident parties to a residential tenancy.

Read a second time.

Ordered to a third reading.

By request of Senator Bablitch, with unanimous consent, the bill was considered for final action at this time.

By request of Senator Kleczka, with unanimous consent, **Senate Bill 181** was referred to the joint committee on Finance.

By request of Senator Kleczka, with unanimous consent, **Senate Bill 181** was withdrawn from the joint committee on Finance and considered for action at this time.

Read a second time.

Ordered to a third reading.

By request of Senator Flynn, with unanimous consent, the bill was considered for final action at this time.

Senate Bill 181

Read a third time and passed.

Senate Bill 200

Relating to counting shared-time pupils for state school aids purposes and granting rule-making authority.

Read a second time.

By request of Senator Kleczka, with unanimous consent, **Senate Bill 200** was referred to joint committee on Finance.

Senate Bill 221

Relating to the statement of the circulator of nomination papers and providing a penalty.

Read a second time.

By request of Senator Kleczka, with unanimous consent, **Senate Bill 221** was referred to the joint committee on Finance.

By request of Senator Kleczka, with unanimous consent, **Senate Bill 221** was withdrawn from the joint committee on Finance and considered for action at this time.

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Read a second time.

Ordered to a third reading.

Senator Berger moved indefinite postponement of **Senate Bill 221**.

The question was: Shall **Senate Bill 221** be indefinitely postponed?

The ayes and noes were demanded and the vote was: ayes, 7; noes, 25; absent or not voting, 1; as follows:

Ayes -- Senators Berger, Bidwell, Flynn, Kleczka, Krueger, Lasee and Lorge -- 7.

Noes -- Senators Adelman, Bablitch, Braun, Chilsen, Engeleiter, Frank, George, Goyke, Hanaway, Harnisch, Harsdorf, Johnston, Kreul, Lorman, McCallum, Maurer, Moody, Offner, Opitz, Risser, Roshell, Strohl, Theno, Thompson and Van Sistine -- 25.

Absent or not voting -- Senator Cullen -- 1.

So the motion did not prevail.

Senate amendment 1 offered by Senator Adelman.

The question was: Adoption of senate amendment 1?
Adopted.

Ordered to a third reading.

By request of Senator Bablitch, with unanimous consent, the bill was considered for action at this time.

Senate Bill 221

Read a third time.

Senator Lorge moved indefinite postponement of **Senate Bill 221**.

The question was: Shall **Senate Bill 221** be indefinitely postponed?

The ayes and noes were demanded and the vote was: ayes, 8; noes, 24; absent or not voting, 1; as follows:

Ayes -- Senators Berger, Bidwell, Engeleiter, Harsdorf, Kreul, Krueger, Lasee and Lorge -- 8.

Noes -- Senators Adelman, Bablitch, Braun, Chilsen, Flynn, Frank, George, Goyke, Hanaway, Harnisch, Johnston, Kleczka, Lorman, McCallum, Maurer, Moody, Offner, Opitz, Risser, Roshell, Strohl, Theno, Thompson and Van Sistine -- 24.

Absent or not voting -- Senator Cullen -- 1.

So the motion did not prevail.

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The question was: Shall the bill pass?

The ayes and noes were demanded and the vote was: ayes, 23; noes, 9; absent or not voting, 1; as follows:

Ayes -- Senators Adelman, Bablitch, Braun, Chilsen, Flynn, Frank, George, Goyke, Hanaway, Harnisch, Johnston, Kleczka, Lorman, Maurer, Moody, Offner, Opitz, Risser, Roshell, Strohl, Theno, Thompson and Van Sistine -- 23.

Noes -- Senators Berger, Bidwell, Engeleiter, Harsdorf, Kreul, Krueger, Lasee, Lorge and McCallum -- 9.

Absent or not voting -- Senator Cullen -- 1.

So the bill passed.

Assembly Bill 27

Relating to cooperative educational service agency annual meetings and termination of membership on a CESA board of control.

Read a second time.

Ordered to a third reading.

By request of Senator Bablitch, with unanimous consent, the bill was considered for final action at this time.

Assembly Bill 27

Read a third time and concurred in.

Assembly Bill 233

An Act to authorize release of \$11,857.25 from the general fund for payment of 2 claims against the state made by Diane Merfeld, John Hotchkiss, Sr. and Geraldine Skaff.

Read a second time.

Ordered to a third reading.

By request of Senator Bablitch, with unanimous consent, the bill was considered for final action at this time.

Assembly Bill 233

Read a third time.

The ayes and noes were required and the vote was: ayes, 32; noes, 0; absent or not voting, 1; as follows:

Ayes -- Senators Adelman, Bablitch, Berger, Bidwell, Braun, Chilsen, Engeleiter, Flynn, Frank, George, Goyke, Hanaway, Harnisch, Harsdorf, Johnston, Kleczka, Kreul, Krueger, Lasee, Lorge, Lorman, McCallum, Maurer, Moody, Offner, Opitz, Risser, Roshell, Strohl, Theno, Thompson and Van Sistine -- 32.

Noes -- None.

Absent or not voting -- Senator Cullen -- 1.

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So the bill was concurred in.

By request of Senator Bablitch, with unanimous consent, the Senate returned to the third order of business.

INTRODUCTION OF BILLS

Read first time and referred:

Senate Bill 353

Relating to fire calls on state trunk highways.

By Senator Maurer; cosponsored by Representative Wagner.

To committee on Aging, Business and Financial Institutions and Transportation.

LEAVE OF ABSENCE

By request of Senator Bidwell, with unanimous consent, he was granted a leave of absence for Thursday, April 30.

By request of Senator Bablitch, with unanimous consent, all action was ordered immediately messaged.

AMENDMENTS OFFERED

Senate substitute amendment 1 to **Senate Bill 169** by Senators Frank and Lorge.

Senate amendment 2 to **Senate Bill 222** by Senator Goyke.

Upon motion of Senator Bablitch the senate adjourned until 9:00 A.M. Thursday, April 30.

11:05 A.M.

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CHIEF CLERK'S CORRECTION

Suggested by Legislative Reference Bureau

Senate Bill 158

1. Page 1, line 1: after "944.17" insert "; and to create 944.17 (2)".

Senate Bill 314

Page 4, line 4: substitute "amended" for "amend".