

STATE OF WISCONSIN
Senate Journal
Ninety–Sixth Regular Session

WEDNESDAY, January 14, 2004

The Chief Clerk makes the following entries dated **January 8, 2004** :

CHIEF CLERK'S ENTRIES

Read first time and referred:

Senate Bill 380

Relating to: reports required to be submitted by the investment board and contracting with outside investment advisors for certain investments.

By Senator Schultz; cosponsored by Representative Montgomery.

To committee on **Agriculture, Financial Institutions and Insurance**.

Senate Bill 381

Relating to: regulatory examinations of savings banks and savings and loan associations.

By Senator Schultz; cosponsored by Representative Montgomery.

To committee on **Agriculture, Financial Institutions and Insurance**.

The Chief Clerk makes the following entries dated **January 9, 2004** :

Read first time and referred:

Senate Bill 382

Relating to: eligibility to attend an independent charter school and payments made to independent charter schools.

By Senators Darling, Plale, Lazich, Reynolds, Kanavas, A. Lasee and Stepp; cosponsored by Representatives Krug, Vukmir, Sinicki, Jensen, Richards, Jeskewitz, J. Wood and Nischke.

To committee on **Education, Ethics and Elections**.

Senate Bill 383

Relating to: eligibility to attend Woodlands School, a charter school located in a 1st class city school district.

By Senators Darling, Plale, Lazich, Reynolds, Stepp, Moore, Carpenter, Coggs and Kanavas; cosponsored by Representatives Sinicki, Jensen, Colon, Zepnick, Jeskewitz, Taylor, Honadel, Richards, Krug, Cullen and McCormick.

To committee on **Education, Ethics and Elections**.

The Chief Clerk makes the following entries dated **January 12, 2004** :

The committee on **Judiciary, Corrections and Privacy** reports and recommends:

Assembly Bill 49

Relating to: burglary and providing a penalty.

Concurrence.

Ayes, 5 – Senators Zien, S. Fitzgerald, Stepp, Carpenter and Coggs.

Noes, 0 – None.

Assembly Bill 157

Relating to: crimes affecting the U.S. flag and providing a penalty.

Concurrence.

Ayes, 5 – Senators Zien, S. Fitzgerald, Stepp, Carpenter and Coggs.

Noes, 0 – None.

Assembly Bill 169

Relating to: the disclosure of public library records.

Concurrence.

Ayes, 3 – Senators Zien, S. Fitzgerald and Stepp.

Noes, 2 – Senators Carpenter and Coggs.

Assembly Bill 206

Relating to: pointing a firearm at certain persons and throwing or expelling bodily substances and providing penalties.

Concurrence.

Ayes, 5 – Senators Zien, S. Fitzgerald, Stepp, Carpenter and Coggs.

Noes, 0 – None.

Assembly Bill 306

Relating to: writing bad checks and providing a penalty.

Concurrence.

Ayes, 3 – Senators Zien, S. Fitzgerald and Stepp.

Noes, 2 – Senators Carpenter and Coggs.

Assembly Bill 390

Relating to: housing of county prisoners from border states in Wisconsin county jails.

Concurrence.

Ayes, 5 – Senators Zien, S. Fitzgerald, Stepp, Carpenter and Coggs.

Noes, 0 – None.

Assembly Bill 421

Relating to: assessments, costs, fees, and surcharges.

Concurrence.

Ayes, 5 – Senators Zien, S. Fitzgerald, Stepp, Carpenter and Coggs.

Noes, 0 – None.

Assembly Bill 423

Relating to: liability for damages caused by dogs, court orders to kill a dog, and providing a penalty.

Concurrence.

Ayes, 3 – Senators Zien, S. Fitzgerald and Stepp.
Noes, 2 – Senators Carpenter and Coggs.

Senate Bill 51

Relating to: authority of a court to suspend a persons operating privilege for violations of ordinances unrelated to the operation of a motor vehicle or for failing to pay a penalty for such a violation.

Adoption of Senate Amendment 1.

Ayes, 5 – Senators Zien, S. Fitzgerald, Stepp, Carpenter and Coggs.
Noes, 0 – None.

Passage as amended.

Ayes, 3 – Senators Zien, S. Fitzgerald and Stepp.
Noes, 2 – Senators Carpenter and Coggs.

Senate Bill 193

Relating to: proceedings involving an American Indian juvenile who is alleged to have committed a delinquent act while physically outside the boundaries of a reservation and off-reservation trust land because of certain tribal court orders.

Passage.

Ayes, 5 – Senators Zien, S. Fitzgerald, Stepp, Carpenter and Coggs.
Noes, 0 – None.

David Zien
Chairperson

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

INTRODUCTION, FIRST READING AND REFERENCE OF PROPOSALS

Read and referred:

Senate Joint Resolution 57

Relating to: the life and public service of 1st Lieutenant Jeremy Lee Wolfe.

By Senators Harsdorf, Brown, Schultz, Darling, Kedzie, Roessler, S. Fitzgerald, Hansen, Zien, Wirch, Decker, Kanavas, Reynolds, A. Lasee, Lazich, Chvala and Stepp; cosponsored by Representatives Plouff, Rhoades, Pettis, Jeskewitz, Molepske, Boyle, Petrowski, Vruwink, Gronemus, Nischke, Gundrum, Schneider, Jensen, Vrakas, Van Roy, Hahn, McCormick, Krug, Gunderson, J. Lehman, Lothian, Suder, Turner, Musser, Ladwig, Freese, M. Williams, Weber, Huber, Miller, Krawczyk, M. Lehman, Nass, Owens, J. Wood, Ainsworth and Taylor.

To committee on **Senate Organization**.

Senate Bill 384

Relating to: authorizing technical college districts to issue revenue bonds for the purpose of providing services and facilities to businesses, granting rule-making authority, and making an appropriation.

By Senators Leibham, Stepp, Kanavas, Darling, Zien, Kedzie and Roessler; cosponsored by Representatives Wieckert, Suder, Ladwig, Musser, Owens, Gunderson, Hahn, Ott, McCormick, Gronemus, Albers and Freese.

To select committee on **Job Creation**.

Senate Bill 385

Relating to: imposing the sales tax on the lease of luxury boxes offered by a local professional baseball park district.

By Senators Carpenter, Chvala and Reynolds; cosponsored by Representatives Berceau, Boyle, Pocan, Miller, Turner, Freese and Taylor.

To committee on **Homeland Security, Veterans and Military Affairs and Government Reform**.

Senate Bill 386

Relating to: retirement benefits provided to educational support personnel under the Wisconsin Retirement System.

By Senators Risser, Chvala, Wirch, Breske and Lassa; cosponsored by Representatives Freese, Berceau, Boyle, Turner, Black, Albers, Pocan, J. Lehman, Miller, Sherman, Plouff, Musser, Sinicki and Taylor.

To joint survey committee on **Retirement Systems**.

Senate Bill 387

Relating to: eliminating the distinction between a minor under 14 years of age and a minor 14 years of age or older with regard to informed consent for treatment for mental illness, transfer, discharge, and access to records.

By Senators Roessler, A. Lasee and Cowles; cosponsored by Representatives Jensen, Hundertmark, Ladwig, Krawczyk, Hines, Gunderson, F. Lasee, Wasserman, Townsend, Seratti, Petrowski and Taylor.

To committee on **Health, Children, Families, Aging and Long Term Care**.

Senate Bill 388

Relating to: increasing bonding authority for the University of Wisconsin Hospitals and Clinics Authority.

By Senators Darling, Panzer, Erpenbach, A. Lasee, Risser, Wirch and Roessler; cosponsored by Representatives Ward, Gard, Kreuser, Turner, Towns, Black, Kaufert, J. Wood, Plouff, Miller, Hahn, J. Lehman, Molepske, Krawczyk, Hines, Huber, Ott, Van Roy, Musser, Vrakas and McCormick.

To committee on **Health, Children, Families, Aging and Long Term Care**.

Senate Bill 389

Relating to: state procurement of contractual services.

By Senators Robson, Carpenter, Chvala, Hansen, Lassa and Wirch; cosponsored by Representatives Pocan, Berceau, Black, Boyle, Freese, J. Lehman, Miller, Plouff, Richards, Schneider, Sinicki, Staskunas, Taylor, Turner, Van Akkeren and Zepnick.

To committee on **Homeland Security, Veterans and Military Affairs and Government Reform**.

Senate Bill 390

Relating to: removal of vegetation along highways under the jurisdiction of the Department of Transportation.

By Senators Kanavas, M. Meyer, Brown, Schultz and Hansen; cosponsored by Representatives Ward, Nischke, Ladwig, Van Roy, Albers, McCormick, Gunderson, Freese, Musser, Gronemus, M. Lehman, Townsend, Hahn, Huebsch, Gielow, Suder, Montgomery, F. Lasee, Seratti, J. Wood, Honadel, Krawczyk, Ainsworth and Vrakas.

To committee on **Transportation and Information Infrastructure**.

Senate Bill 391

Relating to: age requirement for sturgeon spearing license.

By Senators Roessler and Schultz; cosponsored by Representatives Kaufert, Ott, Olsen, Krawczyk and Hundertmark.

To committee on **Environment and Natural Resources**.

Senate Bill 392

Relating to: the removal by towing services of unregistered, abandoned, or illegally parked vehicles.

By Senators Leibham and Breske; cosponsored by Representatives Ainsworth, Berceau, Hines, Ladwig, M. Lehman, LeMahieu, Owens, Petrowski, Seratti, Townsend and Van Roy.

To committee on **Transportation and Information Infrastructure**.

Senate Bill 393

Relating to: transfers of ownership of vehicles and the costs of removing, impounding, and disposing of abandoned vehicles.

By Senators Leibham and Breske; cosponsored by Representatives Ainsworth, Albers, Gunderson, Hahn, Hines, Krawczyk, Ladwig, M. Lehman, LeMahieu, Ott, Owens, Seratti and Townsend.

To committee on **Transportation and Information Infrastructure**.

Senate Bill 394

Relating to: information about real property purchased with stewardship money and public access to that property.

By Senators Schultz, Kedzie, Welch, A. Lasee, Kanavas, Stepp, Brown and Reynolds; cosponsored by Representatives Johnsrud, Ladwig, Jeskewitz, Musser, Ainsworth, J. Wood, Gunderson, Petrowski, Gronemus, Albers, Van Roy, Freese, Weber, Kestell, LeMahieu and Krawczyk.

To committee on **Environment and Natural Resources**.

REPORT OF COMMITTEES

The committee on **Senate Organization** reports and recommends:

Senate Resolution 25

Relating to: notifying the assembly and the governor that Robert J. Marchant is the senate chief clerk.

Introduction.

Ayes, 5 – Senators Panzer, A. Lasee, Zien, Erpenbach and Hansen.

Noes, 0 – None.

To committee on **Senate Organization**.

Mary Panzer
Chairperson

The committee on **Agriculture, Financial Institutions and Insurance** reports and recommends:

Assembly Bill 323

Relating to: the Managed Forest Land Program, providing funding for grants for land acquisition for outdoor recreation, requiring the exercise of rule-making authority, and making an appropriation.

Introduction and adoption of Senate Amendment 1.

Ayes, 5 – Senators Schultz, Brown, Kedzie, Hansen and Lassa.

Noes, 0 – None.

Concurrence as amended.

Ayes, 5 – Senators Schultz, Brown, Kedzie, Hansen and Lassa.

Noes, 0 – None.

Assembly Bill 380

Relating to: the applicability of rules concerning the storage of bulk fertilizer and bulk pesticides.

Concurrence.

Ayes, 5 – Senators Schultz, Brown, Kedzie, Hansen and Lassa.

Noes, 0 – None.

BOLDT, THOMAS, of Appleton, as a member of the State of Wisconsin Investment Board, to serve for the term ending May 1, 2009.

Confirmation.

Ayes, 5 – Senators Schultz, Brown, Kedzie, Hansen and Lassa.

Noes, 0 – None.

Senate Bill 326

Relating to: the deceptive or misleading use of the name of a state-chartered bank, savings bank, savings and loan association, or credit union, the deceptive or misleading use of a name that is deceptively similar to the name of a state-chartered bank, savings bank, savings and loan association, or credit union, and providing a penalty.

Introduction and adoption of Senate Amendment 1.

Ayes, 5 – Senators Schultz, Brown, Kedzie, Hansen and Lassa.

Noes, 0 – None.

Passage as amended.

Ayes, 5 – Senators Schultz, Brown, Kedzie, Hansen and Lassa.

Noes, 0 – None.

Dale Schultz
Chairperson

The committee on **Economic Development, Job Creation and Housing** reports and recommends:

Assembly Bill 508

Relating to: the income and franchise tax credit for sales tax and use tax paid on fuel and electricity consumed in manufacturing.

Concurrence.

Ayes, 4 – Senators Stepp, Roessler, Brown and Plale.

Noes, 1 – Senator Moore.

Cathy Stepp
Chairperson

The committee on **Senate Organization** reports and recommends:

Senate Joint Resolution 49

Relating to: the life and patriotic service of Christopher Glenn Mueller.

Adoption.

Ayes, 5 – Senators Panzer, A. Lasee, Zien, Erpenbach and Hansen.

Noes, 0 – None.

Senate Joint Resolution 51

Relating to: proclaiming March 30, 2004, as Sauk City Day in Wisconsin.

Adoption.

Ayes, 5 – Senators Panzer, A. Lasee, Zien, Erpenbach and Hansen.

Noes, 0 – None.

Senate Joint Resolution 53

Relating to: commending the life and public service of Officer Richard A. Meyer.

Adoption.

Ayes, 5 – Senators Panzer, A. Lasee, Zien, Erpenbach and Hansen.

Noes, 0 – None.

Senate Joint Resolution 54

Relating to: the retirement of Pat Coakley following a long and dedicated career in the service of the Wisconsin legislature as a member of the Joint Legislative Council Staff.

Adoption.

Ayes, 5 – Senators Panzer, A. Lasee, Zien, Erpenbach and Hansen.

Noes, 0 – None.

Senate Resolution 25

Relating to: notifying the assembly and the governor that Robert J. Marchant is the senate chief clerk.

Adoption.

Ayes, 5 – Senators Panzer, A. Lasee, Zien, Erpenbach and Hansen.

Noes, 0 – None.

Mary Panzer
Chairperson

PETITIONS AND COMMUNICATIONS

State of Wisconsin

January 8, 2004

The Honorable, The Senate:

Please add my name as a cosponsor of **2003 Assembly Bill 395**.

Sincerely,

TOM REYNOLDS
State Senator

**State of Wisconsin
Claims Board**

December 23, 2003

The Honorable, The Senate:

Enclosed is the report of the State Claims Board covering the claims heard on December 5, 2003.

The amounts recommended for payment under \$5,000 on claims included in this report have, under the provisions of s. 16.007, Stats., been paid directly by the Board.

The Board is preparing the bill(s) on the recommended award(s) over \$5,000, if any, and will submit such to the Joint Finance Committee for legislative introduction.

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,

JOHN E. ROTHSCHILD
Secretary

STATE OF WISCONSIN CLAIMS BOARD

The State Claims Board conducted hearings at the Department of Administration Building, St. Croix Room, Madison, Wisconsin, on December 19, 2002, upon the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1.Linda Kilgore	Corrections	\$8,578.89

2.Deborah A. Axelson	Workforce Development	\$20,778.68
3.Brandy C. Solomon	Workforce Development	\$74,880.00
4.Market & Johnson	Administration	\$7,569.00
5.David F. Kral	Revenue	\$1,771.06
6.Joyce D. Roettgen	Health and Family Services	\$1,052.10

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

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
7.Kwangbae Kim	University of Wisconsin	\$131.88
8.Oscar I. Winger	Transportation	\$1,043.26

The Board Finds:

1. Linda Kilgore of Cameron, Wisconsin claims \$8,578.89 for vehicle and property damage allegedly related to her employment as a Probation and Parole Agent with DOC. The claimant states that she served one of her offenders with revocation papers, at which time he threatened her. The revocation hearing was scheduled for 9:00 a.m. on July 12, 2002. Around 3:00 a.m. on July 11, 2002, someone propped a lit propane torch under the gas tank of claimant's vehicle, which was parked in the driveway of her residence. The ensuing explosion and fire destroyed the vehicle and various personal items stored in the car, a tree and five bushes, damaged the driveway, and caused smoke damage to the home. An individual named Scott Ristow is suspected in the crime. The claimant states that Mr. Ristow has strong connections to Loren Purintun, the offender scheduled for revocation on July 12. The claimant believes that Mr. Purintun arranged the arson in retaliation for his revocation. The claimant received a settlement payment of \$5,164.25 from her homeowner's insurance, but alleges that her actual damages totaled \$13,743.14. The claimant states that she accepted the insurance payment under protest because she had to purchase a replacement vehicle for her family because the vehicle destroyed was their only car and they do not have access to public transportation. The claimant believes that the connection between Mr. Ristow and Mr. Purintun proves that this arson was a direct result of her actions as a Probation and Parole Agent and believes that DOC should reimburse her for her uninsured damages.

DOC recommends denial of this claim and believes the claimant has already been properly compensated by her insurer. DOC points to insurance payments as follows: 1) Claim for tree removal – \$472. Insurance payment \$450.00. 2) Claim for driveway replacement –\$5058.00. The claimant's insurer limited payment to replacement of the actual damaged portion of the driveway, not the entire driveway as claimant claimed. The insurer paid the claimant \$1160 to replace the damaged part of the driveway. 3) Claim for replacement trees and bushes–\$2321. The cost of replacing the destroyed bushes, \$1500, was completely covered by the claimant's insurance. Replacement of the destroyed tree was limited to \$500, per the claimant's policy. Total insurance payment for tree and bush replacement was \$2150. 4) Claim for pressure wash of roof, soffit and driveway – \$890. The claimant's insurance payment included \$1016.25 for "additional subcontractor allowances and labor allowances" which DOC believes would include these costs. 5) Claim for rake, hose, degreaser – \$18.59. The claimant's insurer also included a \$120 payment to reimburse the claimant for her personal efforts to clean her property, which DOC believes would include these costs. 6) Claim for personal property in automobile – \$483. The

claimant's insurance reimbursed her \$268 for personal property destroyed along with her automobile, however, vehicle floor mats and the 30 cassette tapes allegedly destroyed were not covered pursuant to the claimant's insurance policy. 7) 94 Mercury Cougar – \$4500 Blue Book value. According to the claimant's documentation, she had no insurance on the vehicle. DOC believes that this is a very unfortunate incident but that the claimant has been appropriately reimbursed. Since the crime remains under investigation and no charges have been filed, no definitive proof exists to clearly link the incident to the claimant's employment. Finally, DOC states that even were such a link eventually established, it is the person responsible for the crime who should be held accountable for the claimant's damages and she could seek payment under Chapter 949, Wis. Stats.

The Board concludes the claim should be paid in the reduced amount of \$4,500.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Corrections appropriation s. 20.410(1)(b), Stats. The Board further concludes that, in the event that the claimant is able to obtain reimbursement in the future for losses caused by third parties, the Department of Corrections may seek reimbursement of the funds expended from appropriation s. 20.410(1)(b), Stats.

2. Deborah A. Axelson of Waupun, Wisconsin claims \$20,778.68 for unpaid wages related to a wage complaint filed with DWD in May 1999 against Brooks Ambulance, Inc. In February 2000 DWD concluded that Brooks Ambulance owed the claimant the wages in question. Brooks refused to pay the wages and in September 2000 DWD referred the case to the Columbia County DA, requesting that he commence an action against Brooks. The claimant believes that from this point onward, Jill Komarek, the DWD investigator deliberately stalled by not responding to requests for information from either the claimant's attorney or the DA's office. The claimant states that Mr. Sarbacker wrote DWD in February 2002 requesting additional investigation by DWD but that Ms. Komarek did not cooperate. The claimant believes that Ms. Komarek was somehow in collusion with Brooks Ambulance to stall the case. The claimant questions why DWD did not file a lien on Brooks' assets after the company refused DWD's order to pay the claimant's wages. The claimant also believes that Ms. Komarek did not follow up properly after Brooks refused other requests made by DWD. The claimant points to the fact that another individual with a wage claim against Brooks has already been paid.

DWD recommends this claim not be paid and denies any mishandling of the claimant's wage claim. DWD conducted an investigation and agreed that Brooks owed wages to the claimant. When Brooks did not pay the wages within 15 days, DWD followed standard procedure and referred the claim to the Columbia County DA's Office. The case was referred to Columbia County in September 2000, with ample time for the DA to file a civil action against Brooks. (The statutory deadline to file a civil complaint was May 13, 2001.) Once DWD refers a case to a district attorney, the handling of the matter is within the discretion of the DA and DWD's involvement in the matter is concluded. DWD points to the fact that the statutes provide that wage complaints do not have to be filed with DWD. At any time in this process, the claimant's attorney could have filed a civil action against Brooks directly, on behalf of the claimant, however the claimant's attorney failed to do so. In addition, for reasons unknown to DWD, the Columbia Co DA chose not to file a civil claim against Brooks but instead attempted to bring criminal charges against the company. The criminal charges were dismissed as insufficient and the DA requested additional

information from DWD in an attempt to correct this insufficiency. DWD points to the fact that this information was not requested until February 12, 2002, well after the May 2001 deadline for filing a civil complaint and that DWD responded to this request within 7 days. The claimant also believes that DWD acted inappropriately by not filing a lien against Brooks. DWD states that it files wage liens only in exceptional circumstances (such as an employer on the verge of bankruptcy or that appears to be leaving the state) none of which were applicable to Brooks. DWD also points to the fact that a lien would not have prevented the running on the statute of limitations on filing a civil claim. If the DA's office had filed a civil claim and obtained a judgment, that judgment could have been used to obtain a lien. DWD believes that it handled the claimant's wage claim appropriately and that her losses are attributable to the failure of both her attorney and the Columbia County District Attorney's Office to file a civil action against Brooks Ambulance.

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 Fitzgerald dissenting.]*

3. Brandy C. Solomon of Milwaukee, Wisconsin claims \$74,880.00 for lost wages alleged caused by DWD's approval of forged documents. In August 1999 the claimant was hired by M & I Data Services and her employment was terminated 120 days later. The claimant has since learned that her name (among others) was used in a tax fraud scheme perpetrated by Annette Fabry. Ms. Fabry offered to prepare and submit necessary documentation for several WI businesses to obtain tax credits for hiring individuals who qualified under the Work Opportunity Tax Credit or Welfare-to-Work Tax Credit programs. Ms. Fabry collected a fee of 15% of the tax credits earned for her clients. A federal investigation uncovered that Ms. Fabry fraudulently obtained certification from DWD by submitting forged documents, altered to make it appear that the employees in questions met the eligibility requirements for these tax credit programs, when in fact, they were not eligible. (Ms. Fabry was convicted in August 2003.) The claimant has learned that her name was submitted by Ms. Fabry to fraudulently obtain a tax credit for M & I Data Services. The claimant believes that DWD was careless in approving Ms. Fabry's forged documents. She also believes that because of DWD's approval of the fake documents, she was falsely classified by M & I Data Services as a "high-risk" employee in need of training and rehabilitation. She points to the fact that she was put under constant supervision by the company and counseled daily regarding meeting expectations. In addition, she states that the company employed her for exactly 120 days, which is the minimum required to obtain the tax credit. The claimant believes that DWD should have been more diligent in reviewing the documents submitted by Ms. Fabry. She states that since her termination, she has been mostly unemployed or underemployed. She requests reimbursement of three year's lost wages in the amount of \$74,880.

DWD recommends denial of this claim. DWD believes that the claimant has not established any basis for a claim against the state. The fraud uncovered by the federal investigation involved false documents filed by Ms. Fabry, who benefited from the fraud because her company received a percentage of the tax credits received. DWD believes that there is no evidence that the false tax credit documents had any effect on the claimant's work at M & I Data Services. A review of her discharge by the Wisconsin Labor and Industry Review Commission on April 3, 2000, found that the claimant was discharged for misconduct (excessive absenteeism) connected

with her employment and ordered her to repay previously paid unemployment benefits. DWD states that it has had no involvement with the fraud perpetrated by Ms. Fabry. DWD was a victim of the fraud and fully cooperated with the investigation into the matter.

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.

4. Market & Johnson, Inc. of Eau Claire, Wisconsin claims \$7,569.00 on behalf of claimant's subcontractor, LaForce, Inc. for additional costs incurred for the Highview Geriatric Prison Remodeling Project in Chippewa Falls, WI. The claimant states that in August 2001, LaForce contracted with the claimant to supply doors, frames and hardware for this project. LaForce states that the specifications it received from the architect, PTD, Inc., set forth the quantity of L-6 key switches required for the project. LaForce states that the specifications indicated a quantity of "1 each" for each L-6 mark. LaForce also notes the singular use of the word "switch" in the description: "Provide model 643 heavy duty key switch..." As a result, LaForce only included 1 key switch for each L-6 mark in its bid and submitted its shop drawings to the claimant. In October, the claimant returned the drawings, with notations made by PTD indicating that a second key switch was required at each L-6 mark. LaForce quoted the additional cost to the claimant in November 2001. In summer 2002, the claimant informed LaForce that PTD had denied the request for compensation for the additional switches. LaForce attempted to negotiate with PTD without success. LaForce believes that the language in the specifications was very clear that a single switch was needed for each L-6 mark. LaForce points to the fact that in other descriptions, plural language was used ("2 each push plates"), clearly showing a distinction between the need for singular or multiple items. LaForce believes that it was through no fault of their own that they incurred the costs of the additional 68 key switches. Because LaForce, as a subcontractor of the claimant, had no contract with the state, the claimant is filing this claim on LaForce's behalf.

DOA recommends denial of this claim. The claimant itself does not have any claim against the state in this matter, they are merely acting as a proxy for LaForce, which has no contractual arrangement with the State of Wisconsin. DOA believes that any claim for payment by the claimant based on the fact that its subcontractor worked on a DOA project cannot be supported in the absence of any contractual arrangement between LaForce and the state. DOA believes that LaForce has a more appropriate claim against the claimant, with whom it had contracted, than it does against the state.

The Board concludes the claim should be paid in the reduced amount of \$3,784.50 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Administration appropriation s. 20.505(1)(kc), Stats. [*Member Rothschild not participating.*]

5. David F. Kral of Racine, Wisconsin claims \$1,771.06 for damages related to the incorrect application of a federal tax payment to the Wisconsin DOR. The claimant states that when he filed his 1999 extension requests for both federal and state taxes, he mistakenly mailed checks for both federal and state payments to DOR. The claimant states that DOR did not return the check, but kept the federal payment of \$35,000 for over six months. The claimant also states that because DOR did not endorse the check, he was unaware that it had been misapplied. It was not until the taxpayer submitted his state returns and the DOR returned the \$35,000 along with his refund, that the claimant was aware there was a problem. The IRS charged the

claimant \$1,771.06 for interest because it did not receive the \$35,000 payment in a timely fashion. The claimant believes that DOR should have realized the error and returned the money immediately. The claimant also believes that keeping his money for over six months unjustly enriched DOR. He requests payment of the interest he had to pay the IRS.

DOR recommends denial of this claim. The claimant erred in mailing a check intended for the IRS to DOR. DOR's depository bank processed the check on May 3, 2003. The check was stamp endorsed with the processing date and DOR's lockbox and bank account number. Neither the claimant nor his accountant contacted DOR about the error. In August 2000, DOR received the claimant's 1999 returns. In October 2000, DOR refunded the \$35,000 payment along with the claimant's tax refund. DOR states that its processing procedures and those of its depository bank are set up to provide the most efficient service possible given budget limitations. DOR states that because of the additional cost, the procedures are not set up to identify taxpayer errors such as this. DOR points to the fact that in similar situations, the IRS has indicated that Form 2210 can be submitted to the IRS to request a reduction or waiver of the penalty. DOR has forwarded Form 2210 to the claimant.

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. Joyce D. Roettgen of Union Grove Wisconsin claims \$1,052.10 for damage to her vehicle. The claimant is employed at Southern Wisconsin Center. The claimant alleges that she noticed the damage on July 13, 2003, when she returned to her vehicle in the SWC parking lot. She states that there was damage to the front left quarter panel of the vehicle. The claimant does have insurance coverage for the damage, minus her \$500 deductible. She requests reimbursement for the entire cost of repairing the vehicle.

DHFS recommends denial of this claim. DHFS points to the fact that, although the claimant states on her claim form that she discovered the damage on July 13 in the SWC parking lot, the incident report she attached to her claim states that she noticed the damage on July 14 after she went to a car wash. DHFS believes that there is no evidence to establish when, where or how the damage to the claimant's vehicle occurred and that the state should therefore not be held responsible for the damage.

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. Kwangbae Kim of Madison, Wisconsin claims \$131.88 for repair of damage to vehicle caused when his vehicle was hit by a baseball while driving on the University of Wisconsin-Madison campus. The claimant states that he was driving down Observatory Drive on August 4, 2003, when his car was hit by a baseball from the nearby playing field. According to the claimant, the individual who hit the baseball, James Murphy, and his friend, Miguel Rosales, came up to the claimant after the ball hit the vehicle. The claimant states that Mr. Murphy indicated that he was a law student at the UW and that he would be willing to pay for the claimant to fix the dent in his car caused by the baseball. The claimant states that Mr. Murphy told him to call after the repairs were done and that he would reimburse the claimant for his costs. Both Mr. Murphy and Mr. Rosales gave the claimant their phone numbers. The claimant states that he had the car repaired the next day and contacted Mr. Murphy. The claimant states that Mr. Murphy did not mention reimbursing the claimant but instead told him

to call Mr. Rosales. The claimant contacted Mr. Rosales, who allegedly told him that Mr. Murphy was not responsible for the accident because he had not intended to cause any damage and that Mr. Murphy had no insurance. According to the claimant, Mr. Rosales also stated that the claimant should pursue a claim with the State Claims Board. The claimant requests reimbursement for the cost of repairing the dent in his vehicle.

Although the UW does not dispute the facts of this incident as presented by the claimant, the UW does not believe it should be held responsible for the claimant's damages. As the claimant has indicated, the damage was caused by the actions of two students, who apparently admitted to the act. The UW states that these students are not agents or employees of the University and that there therefore is no negligence on the part of the state. The UW is aware that the board can grant awards based on equitable principles but does not believe that this case warrants such action. The UW believes that motorists assume ordinary risks while traveling on University property. One risk of driving past a playing field is that a car could be hit by a stray ball. The UW believes that it would be unreasonable to expect the University to protect against this possibility by enclosing all of its playing fields and does not believe that it should be required to compensate individuals for this type of accident. Finally, the UW points out that the claimant still has the possibility of gaining relief by pursuing a small claims action against the students responsible for the damage.

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

8. Oscar I. Winger of LaCrosse, Wisconsin claims \$1,043.26 for vehicle damages caused by a state employee driving a state vehicle. The claimant is a state employee and works in the same office as Karen Olson. The claimant states that he and his family were living in the basement of the Olson's home while his family was renovating their home. While living there, the claimant's family parked their vehicles in the Olson's driveway. The claimant states that in April 2002, Ms. Olsen pulled her state vehicle out of the garage on the way to work and struck the claimant's vehicle, which was parked in the driveway. The claimant states that Ms. Olson filled out the appropriate paperwork and turned it in to the La Crosse District Office, which forwarded the documentation to Risk Management. The records were never received by Risk Management and the claimant was not aware of any other options or of the 180 day statute of limitations. He requests reimbursement for the cost of repairing his vehicle. The claimant states that he does not have collision coverage for the vehicle.

DOT recommends payment of this claim. This accident apparently was reported to the district office and the necessary paperwork was filled out, however, no paperwork related to this accident was ever received by DOT Risk Management and a search of the PHH Vehicle Management records show that this accident was not reported to them as required. DOT Risk Management first learned of the accident 16 months after it occurred, when the claimant submitted a claim for damages. DOT believes that the paperwork submitted by the claimant is in order and that the claim would have been paid by DOT if it had been received in a timely manner. DOT believes that Ms. Olson was negligent for improper lookout while backing up her vehicle. DOT therefore recommends payment of this claim.

The Board concludes the claim should be paid in the reduced amount of \$521.63 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Transportation appropriation s.20.395(4)(er), Stats.

The Board concludes:

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

- Deborah A. Axelson
- Brandy C. Solomon
- David F. Kral
- Joyce D. Roettgen
- Kwangbae Kim

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

Linda Kilgore	\$4,500.00	s. 20.410(1)(b)
Market & Johnson, Inc.	\$3,784.50	s. 20.505(1)(kc)
Oscar I. Winger	\$521.63	s. 20.395(4)(er)

Dated at Madison, Wisconsin this 10 day of December 2003.

- Alan Lee, Chair
Representative of the Attorney General
- John E. Rothschild, Secretary
Representative of the Secretary of Administration
- Stan Davis
Representative of the Governor
- Dan Meyer
Assembly Finance Committee
- Scott Fitzgerald
Senate Finance Committee

**State of Wisconsin
Ethics Board**

January 13, 2003

The Honorable, The Senate:

The following lobbyists have been authorized to act on behalf of the organizations set opposite their names.

For more detailed information about these lobbyists and organizations and a complete list of organizations and people authorized to lobby the 2003 session of the legislature, visit the Ethics Board's web site at <http://ethics.state.wi.us>

Driessen, Anthony Inc.	eBay,
Elliott, Brian ies Industry Association	Securit
Mettner, Michelle an Cancer Society	Americ
Rogowski, Michael ies Industry Association	Securit
Springer, Thomas J ies Industry Association	Securit
Westrick, Paul bia--St. Marys Inc	Colum

Also available from the Wisconsin Ethics Board are reports identifying the amount and value of time state agencies have spent to affect legislative action and reports of expenditures for lobbying activities filed by organizations that employ lobbyists.

Sincerely,

R. ROTH JUDD
Director

ADVICE AND CONSENT OF THE SENATE

**State of Wisconsin
Office of the Governor**

November 18, 2003

The Honorable, The Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint ALDEN, GINGER, of Wausau, as a member of the Artistic Endowment Foundation, to serve for the term ending May 1, 2009.

Sincerely,

JIM DOYLE
Governor

Read and referred to committee on **Higher Education and Tourism.**

**State of Wisconsin
Office of the Governor**

January 6, 2004

The Honorable, The Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint JANIAK, MATTHEW J., of Mondovi, as a member of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, to serve for the term ending July 1, 2007.

Sincerely,

JIM DOYLE
Governor

Read and referred to committee on **Economic Development, Job Creation and Housing.**

**State of Wisconsin
Office of the Governor**

January 5, 2004

The Honorable, The Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint MURPHY, ROSALIE A., of Lena, as a member of the Funeral Directors Examining Board, to serve for the term ending July 1, 2005.

Sincerely,

JIM DOYLE
Governor

Read and referred to committee on **Health, Children, Families, Aging and Long Term Care.**

**State of Wisconsin
Office of the Governor**

January 9, 2004

The Honorable, The Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint NEUMAN, CHRISTINE A., of Green Bay, as a member of the Banking Review Board, to serve for the term ending May 1, 2008.

Sincerely,

JIM DOYLE
Governor

Read and referred to committee on **Agriculture, Financial Institutions and Insurance.**

**State of Wisconsin
Office of the Governor**

December 29, 2003

The Honorable, The Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint NEVILLE, DALLAS S., of Eau Claire, as a member of the Judicial Commission, to serve for the term ending August 1, 2005.

Sincerely,

JIM DOYLE
Governor

Read and referred to committee on **Judiciary, Corrections and Privacy.**

**State of Wisconsin
Office of the Governor**

January 5, 2004

The Honorable, The Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint SLAUGHTER, GAIL C., of Two Rivers, as a member of the Occupational Therapists Affiliated Credentialing Board, to serve for the term ending July 1, 2007.

Sincerely,

JIM DOYLE
Governor

Read and referred to committee on **Health, Children, Families, Aging and Long Term Care.**

**State of Wisconsin
Office of the Governor**

January 6, 2004

The Honorable, The Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint TLUSTY, WAYNE G., of Rib Lake, as a member of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, to serve for the term ending July 1, 2007.

Sincerely,

JIM DOYLE
Governor

Read and referred to committee on **Economic Development, Job Creation and Housing.**

**State of Wisconsin
Office of the Governor**

January 9, 2004

The Honorable, The Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint WILSON, WALTER L., of Milwaukee, as a member of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, to serve for the term ending July 1, 2006.

Sincerely,

JIM DOYLE
Governor

Read and referred to committee on **Economic Development, Job Creation and Housing.**

**REFERRALS AND RECEIPT OF
COMMITTEE REPORTS CONCERNING
PROPOSED ADMINISTRATIVE RULES**

Senate Clearinghouse Rule 03–076

Relating to pesticide product restrictions.

Submitted by Department of Agriculture, Trade and Consumer Protection.

Report received from Agency, January 12, 2004.

Referred to committee on **Agriculture, Financial Institutions and Insurance**, January 14, 2004.

Senate Clearinghouse Rule 03–104

Relating to assessment of agricultural land.

Submitted by Department of Revenue.

Report received from Agency, January 14, 2004.

Referred to committee on **Homeland Security, Veterans and Military Affairs and Government Reform**, January 14, 2004.

The committee on **Environment and Natural Resources** reports and recommends:

Senate Clearinghouse Rule 03–074

Relating to waiver of the slow–no–wake restriction on Elkhorn Lake, Walworth County.

No action taken.

Neal Kedzie
Chairperson

AMENDMENTS OFFERED

Senate amendment 1 to **Senate Bill 209** offered by Senator Kanavas.

**LEGISLATIVE REFERENCE BUREAU
CORRECTIONS**

CORRECTIONS IN:

2003 ASSEMBLY BILL 263

Prepared by the Legislative Reference Bureau
(January 13, 2004)

1. Page 3, line 16: before “these” insert “of”.

**MOTIONS UNDER SENATE RULE 98 AND
JOINT RULE 7**

for the Month of December 2003

A certificate of commendation by the Wisconsin Senate on the motion of Senator Darling, for Edward Anderson, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Legislature on the motion of Senator Roessler, for Sergeant Kenneth N. Bundick, on the occasion of his retirement after 27 years of dedicated service to the Wisconsin State Patrol.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Chvala, for Pat Coakley, on the occasion of her 40 years of devoted service to the Wisconsin Legislature.

A certificate of condolence by the Wisconsin Senate on the motion of Senator Coggs, for the family, friends, colleagues and

community of Marcia P. Coggs, on the occasion of her homecoming in the love, unity and peace.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Decker, for Greg DeBoth of DeBoth Brothers Trucking and Logging Company in Prentice, Wisconsin, on the occasion of generously donating time and equipment that help cut the Holiday Christmas Tree for the State Capitol.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Decker, for Ron DeBoth of DeBoth Brothers Trucking and Logging Company in Prentice, Wisconsin, on the occasion of generously donating time and equipment that help cut the Holiday Christmas Tree for the State Capitol.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Decker, for Tim DeBoth of DeBoth Brothers Trucking and Logging Company in Prentice, Wisconsin, on the occasion of generously donating time and equipment that help cut the Holiday Christmas Tree for the State Capitol.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Kanavas, for Martin H. Frank, on the occasion of his years of dedicated service to the Waukesha State Bank.

A certificate of congratulations by the Wisconsin Legislature on the motion of Senator Schultz, for Linda Gentes, on the occasion of her retirement after 17 years as the head of the University of Wisconsin’s Continuing Education Department.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Roessler, for Judge Robert Haase, on the occasion of his retirement after a two decades as a Winnebago County Circuit Court.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Decker, for Wayne and Shirley Hamann, on the occasion of providing Hamann Trucking, Inc. for donating their time and equipment to bring the Holiday Christmas Tree to the State Capitol from Taylor County.

A certificate of congratulations by the Wisconsin Legislature on the motion of Senator Panzer, for Calvin Hermann, on the occasion of receiving the 2004 Outstanding Restaurateur of the Year by the Wisconsin Restaurant Association Lake to Lake Chapter.

A certificate of congratulations by the Wisconsin Legislature on the motion of Senator Kanavas, for Tyler R. Howard, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Risser, for the life of John Patrick Hunter, on the occasion of his life dedication to his family, advocacy for social and civil justice and passionate love for his community.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Harsdorf, for Ms. Helga Konopacki, on the occasion of her 25 years of dedicated service to the Luck Public Library.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Decker, for Jim Leinfelder of Ogema, Wisconsin, on the occasion of generously donating time and equipment that assisted in cutting the Holiday Christmas Tree for the State Capitol.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Decker, for Jim and MaryAnn Martin of Highland Trees and Wreaths by the Martins, in Wausau, Wisconsin, on the occasion of donating the holiday wreaths to decorate the Executive Residence.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Darling, for Bryan Daniel Phillips, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Erpenbach, for Eric C. Plantenberg, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Lazich, for Kevin Michael Rynders, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Legislature on the motion of Senator Cowles, for Aaron Sannes, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Decker, for Al Seeger of Sheldon, Wisconsin, on the occasion of generously donating time and equipment that assisted in loading the Holiday Christmas Tree on the truck to head to the State Capitol.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Chvala, for Three Gaits Therapeutic

Horsemanship Center, on the occasion of its 20th Anniversary.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Decker, for the United States Department of Agriculture Forest Service, on the occasion of Medford section of the Chequamegon–Nicolet National Forest being chosen to provide the Holiday Christmas Tree for the State Capitol.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Hansen, for Jack D. Washington, on the occasion of his remarkable life and extend deepest sympathies to his family, friends and colleagues.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Lasee, for Wayside Parkview Estates, on the occasion of establishing an affordable country living for independent seniors.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Hansen, for Florence Wellens, on the occasion of celebrating her 100th Birthday shared with family and friends.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Cowles, for Chad Zadrazil, on the occasion of earning and attaining the rank of the Eagle Scout Award.