

JOURNAL OF THE SENATE [May 28, 1975]

STATE OF WISCONSIN

Senate Journal

Eighty-Second Regular Session

WEDNESDAY, May 28, 1975.

9:00 A.M.

The senate met.

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

The senate stood for a moment of silent prayer.

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

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

Senators Bablitch, Berger, Bidwell, Chilsen, Cullen, Devitt, Dorman, Flynn, Frank, Goyke, Harnisch, Hollander, Keppler, Kleczka, Knowles, Knutson, Krueger, LaFave, Lorge, McKenna, Martin, Maurer, Morrison, Murphy, Parys, Peloquin, Petri, Risser, Sensenbrenner, Swan, Theno, Thompson and Whittow -- 33.

Absent -- None.

Absent with leave -- None.

BILLS INTRODUCED

Read first time and referred:

Senate Bill 419

Relating to the rights and duties of adjoining landowners with respect to lateral support.

By Senator Flynn, by request of Department of Industry, Labor and Human Relations.

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To committee on Judiciary and Consumer Affairs.

PETITIONS AND COMMUNICATIONS

State of Wisconsin
Claims Board

May 22, 1975.

Mr. Glenn Bultman
Senate Chief Clerk
State Capitol
Madison, Wisconsin

Dear Mr. Bultman:

Enclosed is a copy of the report and recommendation of the State Claims Board covering the claims heard on April 28, 1975

The amounts recommended for payment under 500 on claims included in this report have, under the provisions of s. 16.007, Wisconsin Statutes, been paid directly by the Board.

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 as to the nature of the claims which come before it for consideration.

Sincerely,
EDWARD MAIN
Secretary

State of Wisconsin
Claims Board

The Wisconsin Claims Board conducted hearings at the State Capitol on Monday, April 28, 1975, upon the following claims:

<i>Claimant</i>	<i>Amount of Claim</i>
1. Highway Pavers, Inc.-----	\$ 51,577.96
2. J. F. Edwards Const. Co.-----	26,325.00
	10,500.00
3. Wisconsin Telephone Co.-----	371.70
4. Robert A. Moe -----	354.80
5. Odell Brown-----	22.00
6. Estate of Joseph Stokstad -----	550.00
and -----	.50.00
7. Marshall and Hsley Bank -----	5.00
8. Lynda Schneckloth -----	86.85

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9.	Byron J. Oler -----	496.95
10.	Diane Mary Silvers-----	75.00
11.	Lumumba Kenyatta -----	499.99
12.	Peterson Millwright & Const. Co.-----	50.00
13.	Pearl Cutsforth -----	916.85
14.	Elroy Harvey-----	845.00
15.	Richard Sedlacek -----	60.16
16.	Larry Murphy -----	12.48
17.	Hillis Hanning-----	100.00
18.	Arthur F. Niquet-----	50.00
19.	Estate of Bernard Czecholinski -----	165.85
20.	James F. Jauquet -----	375.60
21.	James B. Leedom II-----	87.61
22.	George Douglas Bogue-----	1,137.02
23.	Virgil D. B. Justice -----	6,053.16
24.	Anna Marie Justice-----	80.00
25.	Linda S. Pawelczak-----	1,168.50
26.	Kenneth Pawelczak -----	654.50
27.	Dennis Pawelczak -----	4,616.00
28.	Edward Pawelczak -----	1,712.00
29.	Gladys Pawelczak -----	25,670.25

THE BOARD FINDS:

1. *Highway Pavers Inc.*

12125 West Silverspring Road, Milwaukee, claims \$51,577.96 for asphalt on state highway projects in the northeastern area of the State on Highways 42 and 57 in Door and Kewaunee Counties on June 1, 1974, to December 31, 1974. Claimants bid the material at \$55 per ton. Through the course of the winter the claimant was not able to negotiate a contract with any supplier. In a June, 1974, contract, claimant finally signed a contract to enable the projects to be constructed in the summer of 1974 without delay. As a result, claimant was obliged to pay \$86.18 on 1,654.2 tons of asphalt. The Board finds that the State is not legally obliged to pay more than the \$55 per ton bid for said asphalt, and concludes that the claim is not one for which the State is legally liable, nor one which the State should assume and pay on equitable principles.

2. *J. F. Edwards Const. Co.*

P.O. Box 49, Geneseo, Illinois, claims \$26,325.00 and \$10,500.00 which the State has withheld as liquidated damages on two State highway construction projects. The first project was on the East-West Freeway on I-94 in Waukesha-Milwaukee Counties and occurred in 1973. The Department of Transportation withheld

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\$225 per day for 117 days that the project was late in completion. The second project was on the Lake Freeway I-794 in Milwaukee County in 1973. The Department of Transportation withheld \$100 a day for each of 105 days that this project was late in completion. The cause of the delay was attributed to 28 high-mast poles not meeting the required specifications. The State suspended the running of the contract from January 25, 1973, until June 26, 1973, for a period of five months, noting that claimant was having difficulty in obtaining the required high-mast poles. There was an additional 37 days granted for a single change order whereby one additional pole was required.

The four factors which are commonly used to define the phrase "beyond the control of the contractor" are generally considered to be: 1) conditions of weather; 2) strikes and other types of labor related disruptions 3) acts of God; 4) industry-wide shortages. None of these factors are present in this case. Claimant's problem was with its supplier. There is no showing that the Highway Commission abused its discretion in refusing to extend the time for performance by the claimant for the periods other than the times already granted to the claimant. The Board finds that the claim is not one for which the State is legally liable nor one which the State should assume and pay on equitable principles.

3. *The Wisconsin Telephone Co.*

722 North Broadway, Milwaukee, claims \$371.70 for damages to its conduit run occurring on July 11, 1974, at the New Frontage Road south of U.S. Highway 16 and west of State Trunk Highway 83 in Chenequa, as a result of activities of the Wisconsin Highway Department digging postholes for road signs. The Board concludes the claim should be paid on equitable principles.

4. *Robert A. Moe*

4337 Herrick Lane, Madison, executor for the estate of Bernice Moe, deceased, claims \$354.80 for damages allegedly caused by a defective traffic signal. Richard Jordan of the Department of Transportation testified that the green arrow for left-hand turns goes off in one-fourth of a second in the event that there is on-coming traffic with the green light. According to the police accident report, on September 11, 1974, Bernice Moe's automobile ran into the side of a car which was approaching the intersection with the green light from the opposite direction. The Board concludes that there has been an insufficient showing of negligence on the part of employees, agents or officers of the State, and concludes that the claim is not one for which the State is legally

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liable nor one which the State should assume and pay on equitable principles.

5. *Odell Brown*

4343 North 18th Street, Milwaukee, claims \$22.00 for eyeglass frames which were damaged during an altercation while he was in the process of executing an arrest for disorderly conduct. Claimant is employed as a State Patrol Trooper. The incident occurred on August 14, 1974, at U.S. Highway 41 and Mayfield Road in Washington County. The Board concludes the claim should be paid on equitable principles.

6. *Agnes Stokstad*

Personal Representative of the estate of Joseph Stokstad, claims \$550.00 and \$50.00 for two different stale checks which were never presented for payment. Both checks were dated May 10, 1967. The claimant acknowledges the reduction of the \$550.00 claim to \$499.00 to expedite the payment of same. The Board concludes that the claims in the reduced amount of \$499.00 and \$50.00 should be paid on equitable principles.

7. *The Marshall & Ilsley Bank*

770 North Water Street, Milwaukee, claims \$5.00 for a stale check, No. A058855, dated January 26, 1968. The Board concludes the claim should be paid on equitable principles.

8. *Linda H. Schneekloth*

907A Eagle Heights, Madison, claims \$86.85 for three pair of iceskates, 1 metal trunk, and wool material, which was stored in the basement of her apartment and damaged by water on October 6, 1974. The water had been leaking in through an opening where wires had been installed by the Electric Company in a box located near her locker. The condition has been corrected by the University of Wisconsin. The Board concludes the claim should be paid on equitable principles.

9. *Byron J. Oler*

312 North Bassett Street, Madison, claims \$496.95 for a camera and leather case which were taken from his rented locker at the Memorial Union on February 7, 1975. An employe of the Memorial Union cut the lock on his locker by mistake, allowing the theft to occur. The Memorial Union official mistakenly believed that the locker was not being rented. The Board concludes the claim should be paid on equitable principles.

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10. *Diane Mary Silvers*

5 Mountain Laurel Drive, Wethersfield, Connecticut, claims \$75.00 for a stale check issued on August 28, 1969. The Board concludes the claim should be paid on equitable principles.

11. *Lumumba Kenyatta*

2439 Superior Street, Madison, claims \$499.00 for pain and suffering endured by him on September 4, 1974, at the State Office Building on East Washington Avenue in Madison. Claimant was ordered by his immediate supervisor to exterminate bats that had been gathering in the west entrance of the State Office Building. Claimant was given no other equipment than a racket type device and a stick to kill the bats. In attempting to carry out his orders, claimant was bitten by a bat. Because the bat was not captured, claimant had to undergo the entire rabies vaccination series consisting in part of 27 individual shots in a circular pattern in claimant's abdomen. At the time of the incident, claimant was on a work-release program from the affects of the rabies treatment. The Board concludes the claim of \$499.00 should be paid on equitable principles, provided the claimant releases the State and any employes, agents or officers of the State from any liability arising from this incident.

12. *Peterson Millwright & Construction, Inc.*

600 South Water Street, Watertown, claims \$50.00 as a refund from the Secretary of State's Office for inadvertently listing par value stock on its article of incorporation dated December 31, 1974. If the mistake had not been made, the fee would have been \$50.00 instead of the \$100.00 collected by the Secretary of State. The Board concludes the claim should be paid on equitable principles.

13. *Pearl Cutsforth*

3606 West National Avenue, Milwaukee claims \$916.85 for medical expenses arising from a fall on June 11, 1974, at the Wisconsin Correctional Institution in Fox Lake, Wisconsin. Claimant was visiting her son at the Institution and as she was leaving the Administration Building, she fell on the steps on the west side of the building. There was no railing to assist claimant and upon falling she struck her left arm and right leg. Upon returning to Milwaukee, it was determined by the St. Francis Hospital that her arm was broken in three places. The Board concludes the claim should be paid on equitable principles.

14. *Elroy Harvey*

637 Reed Street, Plymouth, claims \$845.00 for an automobile which was taken on September 15, 1974, from his driveway by two

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inmates of the Kettle Moraine Boys School who were on runaway status. Subsequently, the boys drove the car to Whitefish Bay where an accident completely demolished claimant's car. This Board has a long standing policy of not honoring claims against the State for damages caused by inmates on runaway status. There is no showing of negligence on the part of employees, agents or officers of the State, and the Board concludes the claim is not one for which the State is legally liable nor one which the State should assume and pay on equitable principles.

15. *Richard M. Sedlacek*

Kansasville, claims \$60.16 for damages to his automobile while parked on the grounds at Southern Colony Training School which were caused by a resident on December 10, 1974. The Board concludes the claim should be paid on equitable principles.

16. *Larry R. Murphy*

906 Garfield Street, Madison, claims \$12.48 for a dress shirt which was damaged by a leaking ballpoint pen issued to him at Room 400 of the 1 West Wilson Street State Office Building on January 20, 1975. The Board concludes the claim is not one for which the State is legally liable nor one which the State should assume and pay on equitable principles.

17. *Hillis Hanning*

401 Morningside, Madison, claims \$100.00 for damages to his automobile as the result of an incident occurring on October 15, 1974, at the Whitman House on Northport Drive in Madison. Claimant was a volunteer transporting a child for whom the State of Wisconsin is the guardian. The child would not leave the car voluntarily when he reached his destination. Claimant got out of his car to let the child out from the passenger side. The child then reached over and shifted the car into neutral. The car was on a slope and it rolled backwards, and the opened door caught on a parked car. The total damage was \$325.00 and all but \$100.00 was covered by the claimant's insurance policy. The Board concludes the claim in the amount of \$100.00 should be paid on equitable principles.

18. *Arthur Niquet*

2821 Milton Avenue, Janesville, claims \$50.00 for the inspection and appraisal of property on October 15, 1972. There are insufficient facts to warrant the payment of this claim on either legal or equitable principles. The Board concludes the claim is not one for which the State is legally liable nor one which the State should assume and pay on equitable principles.

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19. *Joseph Huber*

Personal Representative of the estate of Bernard A. Czecholinski, deceased, 3600 South 19th Street, Milwaukee, claims \$165.85 for an overpayment of the inheritance taxes on said estate arising from an erroneous appraisal of a bank account. A recomputation of the claim by the Department of Revenue indicates that the overpayment of inheritance taxes was only \$150.00, \$9.00 of which was retained by the county. The Board concludes that the claim in the adjusted amount of \$141.00 should be assumed and paid by the State on equitable principles.

20. *James F. Jauquet*

924 North Wisconsin Avenue, DePere, claims \$375.60 for the portion of an income tax refund which was due him for the year 1973. The refund was withheld on June 26, 1974 and applied for delinquent taxes owed by claimant. As the result of a change in a federal tax audit, it appeared that the claimant had a refund due him. The federal change occurred on September 3, 1974, but the claim for refund was denied by the State of Wisconsin since the two-year statute of limitations had run from the time of the 1972 assessment. The Department of Revenue recommends a refund to the claimant of his actual tax in the amount of \$331.20. The Board concludes the claim in the amount of \$331.20 should be paid on equitable principles.

21. *James B. Leedom*

8400 North Foxcroft Lane, Milwaukee, claims \$87.61 for a stale check dated July 1, 1968. The Board concludes the claim should be paid on equitable principles.

22. *George Douglas Bogue*

P.O. Box 56, Portage, claims \$1,137.02 for services rendered as a public administrator in Columbia County, Wisconsin, for the period ending December 31, 1973. During December, 1973, claimant became entitled to fees of \$788.35, and payment for same was ordered by the Honorable Daniel C. O'Connor, Columbia County Probate Judge, on January 8, 1974. In addition, he was also entitled to fees of \$272.06 for services performed prior to December 31, 1973, but which were not included in the aforesaid court order because claimant was not aware of their existence at the time said order was entered. At the hearing, claimant abandoned his claim for \$761.61 of additional fees. The Columbia County Treasurer had submitted all funds available to honor the claim. See Opinion of the Attorney General, dated October 24, 1973. A majority of the Board (member Main dissenting)

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conclude the claim in the amount of \$1,060.41 should be paid on equitable principles.

23. 23 through 29

Claims have been filed by the following individuals in the following amount as the result of damages incurred from a tent which fell at the State Fair Park on August 11, 1969. These claims included damages for lost wages, pain and suffering and medical expenses.

<i>Claimant</i>	<i>Claim</i>	<i>Medical Expenses Not Reimbursed by Insurance</i>
23. Virgil D. B. Justice	\$ 6,053.16	\$ 420.00
24. Anna Marie Justice	80.00	80.00
25. Linda S. Pawelczak	1,168.50	168.50
26. Kenneth Pawelczak	654.50	154.50
27. Dennis Pawelczak	4,616.00	184.00
28. Edward Pawelczak	1,712.00	262.00
29. Gladys Pawelczak	25,670.25	356.00

Consistent with the manner in which similar claims related to this incident have been handles, the Board concludes that that portion of the claims which are attributed to medical expenses not reimbursed by insurance should be paid on equitable principles, and the balance of the claims are denied.

THE BOARD CONCLUDES:

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

Highway Pavers, Inc.
 J. F. Edwards Const. Co.
 Robert A. Moe
 Elroy Harvey
 Larry R. Murphy
 Arthur Niquet

2. The claims of the following claimants in the following amounts are justified under sec. 16.007 (6), Wis. Stats.

The Wisconsin Telephone Co. -----	\$ 371.70
Odell Brown -----	22.00
Agnes Stokstad -----	499.00
	50.00
The Marshall & Ilsley Bank -----	5.00
Linda H. Schneekloth -----	86.85
Byron J. Oler -----	496.95
Diane Mary Silvers -----	75.00

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Lumumba Kenyatta	499.00
Peterson Millwright & Const., Inc.	50.00
Richard M. Sedlacek	60.16
Hillis Hanning	100.00
Joseph Huber.....	141.00
James F. Jauquet.....	331.20
James B. Leedom.....	87.61
Virgil D. B. Justice	420.00
Anna Marie Justice	80.00
Linda S. Pawelczak	168.50
Kenneth Pawelczak	154.50
Dennis Pawelczak	184.00
Edward Pawelczak	262.00
Gladys Pawelczak	356.00

THE BOARD RECOMMENDS:

1. That payment of \$916.85 be made to Pearl Cutsforth for medical expenses not reimbursed by insurance incurred as the result of a fall at the Wisconsin Correctional Institution in Fox Lake, Wisconsin, on June 11, 1974.

2. That payment of \$1,060.41 be made to George Douglas Bogue for services performed as Public Administrator of Columbia County prior to December 31, 1973.

Dated at Madison, Wisconsin this 14th day of May, 1975.

GERALD D. KLECZKA
Chairman, Senate Finance
Committee

GEORGE MOLINARO
Chairman, Assembly Finance
Committee

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JOSEPH SENSENBRENNER
Representative of Governor

EDWARD D. MAIN
Representative of Secretary of
Administration

ALLAN P. HUBBARD
Representative of Attorney
General

MOTIONS

By request of Senator Dorman, with unanimous consent, **Assembly Bill 222** was withdrawn from the senate committee on Finance and made a special order of business at 1:30 P.M.

Upon motion of Senator Whittow the senate recessed until 1:30 P.M.

9:11 A.M.

RECESS

1:30 P.M.

The senate reconvened.

SPECIAL ORDERS

Assembly Bill 222

Relating to state finances and appropriations constituting the executive budget bill of the 1975 legislature, and making appropriations.

Read a second time.

By request of Senator Krueger, with unanimous consent, the senate recessed until 1:55 P.M.

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1:34 P.M.

RECESS

1:55 P.M.

The senate reconvened.

The question was: Adoption of senate amendment 1 to **Assembly Bill 222**?

By request of Senators Cullen, Martin and Devitt, with unanimous consent, they were added as coauthors of senate amendment 1.

Senator Swan moved nonconcurrency in **Assembly Bill 222**.

AMENDMENTS OFFERED

Senate amendment 2 to **Assembly Bill 222** by Senators Berger, Morrison, Goyke, Harnisch, Maurer, McKenna and Peloquin.

Senate amendment 3 to **Assembly Bill 222** by Senator Risser.

Senate amendment 4 to **Assembly Bill 222** by Senators Flynn, Kleczka and McKenna.

Senate amendment 5 to **Assembly Bill 222** by Senators Lorge, LaFave, Keppler, Sensenbrenner, Murphy, Devitt, Bidwell, Knowles, Hollander, Chilsen, Krueger and Theno.

Senate amendment 6 to **Assembly Bill 222** by Senators Lorge, LaFave, Keppler, Sensenbrenner, Murphy, Devitt, Bidwell, Knowles, Chilsen and Krueger.

Senate amendment 7 to **Assembly Bill 222** by Senators Morrison, Cullen, Goyke, Harnisch and Bablitch.

Senate amendment 8 to **Assembly Bill 222** by Senators Morrison, Cullen, McKenna, Goyke, and Harnisch.

Senate amendment 1 to senate amendment 8 to **Assembly Bill 222** by Senator Morrison.

Senate amendment 9 to **Assembly Bill 222** by Senators Martin and Cullen.

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Senate amendment 10 to **Assembly Bill 222** by Senators Sensenbrenner, Murphy, Devitt, Lorge, Petri, Bidwell, Hollander, Chilsen and Kepler.

Senate amendment 11 to **Assembly Bill 222** by Senators Lorge, Sensenbrenner, Devitt, Bidwell, Murphy, Chilsen and Kepler.

Senate amendment 12 to **Assembly Bill 222** by Senators Martin, Maurer, Frank, Peloquin, Bidwell, Hollander, Devitt, Chilsen, Krueger, Goyke and LaFave.

Senate amendment 13 to **Assembly Bill 222** by Senators Goyke, Bablitch, Cullen, Swan, Hollander, Lorge and Harnisch.

Senate amendment 14 to **Assembly Bill 222** by Senators LaFave, Martin, Theno and Hollander.

Senate amendment 15 to **Assembly Bill 222** by Senators Bablitch, Harnisch, Dorman, Martin, Chilsen, McKenna, Hollander, Thompson, LaFave and Peloquin.

Senate amendment 16 to **Assembly Bill 222** by Senator Risser.

Senate amendment 1 to **Senate Bill 382** by Senator Hollander.

By request of Senator Lorge, with unanimous consent, the senate adjourned in honor of Sheboygan Brat Day and Senator Lorge's Aunt Catherine Meinholtz, on her 80th birthday and 60 years of service as a housekeeper to Father Robert Bier at St. John the Baptist Church in Johnsburg, Wisconsin.

Upon motion of Senator Whittow the senate adjourned until 9:00 A.M. Thursday, May 29.

2:52 P.M.

GUESTS

During today's session, the following visitors honored the senate with their presence:

Donald E. Tewes, Paul E. Davies and Donald W. Fundingsland, representing Waukesha Memorial Hospital, Inc., Board of Administration, guests of Senator Murphy.