

JOURNAL OF THE SENATE [May 3, 1977]

STATE OF WISCONSIN

# Senate Journal

Eighty-Third Regular Session

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TUESDAY, May 3, 1977.

10:00 A.M.

The senate met.

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

The senate stood for the prayer which was offered by Reverend Louis Swartz, Pastor of Covenant Presbyterian Church of Madison

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

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## LEAVE OF ABSENCE

By request of Senator Bablitch, with unanimous consent, Senators Swan and Flynn were granted a leave of absence for the balance of the day.

By request of Senator Sensenbrenner, with unanimous consent, Senators Chilsen, Krueger and Murphy were granted a leave of absence for the balance of the day.

Senators Adelman, Bablitch, Berger, Bidwell, Braun, Cullen, Dorman, Frank, Goyke, Harnisch, Keppler, Kleczka, Lorge, McCallum, McKenna, Maurer, Morrison, Offner, Parys, Peloquin, Petri, Radosevich, Risser, Sensenbrenner, Theno, Thompson and Van Sistine -- 27.

Absent -- None.

Absent with leave -- Senators Chilsen, Flynn, Krueger, Murphy and Swan -- 5.

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BILLS INTRODUCED

Read first time and referred:

**Senate Bill 374**

Relating to retirement benefits for judges, legislators and elected constitutional officers.

By Senator Thompson.

To Joint Survey Committee on Retirement Systems.

**Senate Bill 375**

Relating to requiring signs indicating brands sold from automatic liquor dispensers and providing a penalty.

By Senators Kleczka and Krueger; cosponsored by Representatives Dorff, Conradt, Bradley, Mohn and Looby.

To committee on Governmental and Veterans' Affairs.

**Senate Bill 376**

Relating to walks and railings on railroad bridges.

By Senators Cullen and Theno; cosponsored by Representatives Ward, Murray, McEssy and Schricker.

To committee on Commerce.

**Senate Bill 377**

Relating to permitting irrevocable burial trusts.

By Senators Bablitch, Cullen, Krueger, Berger, Flynn, Risser, McKenna, Offner, Adelman, Radosevich, Bidwell, Keppler, Van Sistine, Theno, Swan, Chilsen and Maurer, cosponsored by Representatives Groshek and Hasenohrl.

To committee on Judiciary and Consumer Affairs.

**Senate Bill 378**

Relating to the dog license fund.

By Senator Bablitch; cosponsored by Representatives Groshek and Hasenohrl, by request of the Portage County Board of Supervisors.

To committee on Governmental and Veterans' Affairs.

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COMMITTEE REPORTS

The committee on Commerce reports and recommends for introduction:

**Senate Bill 379**

Relating to allowing brewers, bottlers and wholesalers to make contributions to certain organizations.

By committee on Commerce.

Introduction; Ayes, 6; Noes, 0.

Read first time and referred to committee on Commerce.

By request of Senator Parys, with unanimous consent, **Senate Bill 379** was withdrawn from the Commerce committee and referred to the committee on Senate Organization.

And further recommends:

**BROEREN, JEAN C.**, of Thorp, as secretary of the Department of Business Development, to succeed William Kidd, resigned, to serve for the term ending at the pleasure of the Governor.

Confirmation; Ayes, 5; Noes, 0.

**HUGHES, WILLIAM H.**, of Madison, as Commissioner of Credit Unions, to succeed himself, to serve for the term ending March 1, 1983.

Confirmation; Ayes, 6; Noes, 0.

**MCCMAHON, ROLLA J.**, of Madison, as Commissioner of Savings and Loan, to succeed himself, to serve for the term ending March 1, 1983.

Confirmation; Ayes, 6; Noes, 0.

**MILDENBERG, ERICH**, of Milwaukee, as Commissioner of Banking, to succeed himself, to serve for the term ending March 1, 1983.

Confirmation; Ayes, 6; Noes, 0.

**PETERSON, JAMES O.**, of Middleton, as Administrator of the Division of Motor Vehicles, to succeed himself, to serve for the term ending March 1, 1983.

Confirmation; Ayes, 6; Noes, 0.

JOURNAL OF THE SENATE [May 3, 1977]

THEISEN, RAY J., of Altoona, as a member of the Credit Union Review Board, to serve for the term ending May 1, 1981.  
Confirmation; Ayes, 6; Noes, 0.

RONALD G. PARYS  
Chairman

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PETITIONS AND COMMUNICATIONS

**Senate Petition 55**

A petition by 28,037 residents of Wisconsin protesting the Federal and State plan to dewater the marsh and to haze the geese and wildlife out of the Horicon National Wildlife Refuge and all refuge areas in east-central Wisconsin.

By Senator Harnisch.

Read and referred to committee on Natural Resources and Tourism.

**Senate Petition 56**

A petition by 17 residents of the state of Wisconsin protesting the Federal and State plan to dewater the marsh and to haze the geese and wildlife at the Horicon National Wildlife Refuge.

By Senator Harnisch.

Read and referred to committee on Natural Resources and Tourism.

**Senate Petition 57**

A petition in the form of a Resolution by the Wisconsin Trappers Association, Inc. in support of any legislation that will create authority within the State of Wisconsin to acquire further wetlands.

By Senator Harnisch.

Read and referred to committee on Natural Resources and Tourism.

**Senate Petition 58**

A petition in the form of a Resolution by the Wisconsin Trappers Association in support of Senate Bill 247 relating to requiring completion of a hunter safety course before issuance of a hunting license.

By Senator Harnisch.

Read and referred to committee on Natural Resources and Tourism.

JOURNAL OF THE SENATE [May 3, 1977]

State of Wisconsin  
Claims Board

April 18, 1977

Don Schneider  
Senate Chief Clerk  
State Capitol  
Madison, Wisconsin 53702

Dear Mr. Schneider:

Enclosed is the report of the State Claims Board covering claims heard on March 28, 1977.

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.

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 March 28, 1977, upon the following claims:

<i>Claimant</i>	<i>Amount</i>
1. Willis Lamberies -----	\$ 3,614.00
2. Jean Husten-----	583.45
3. Georgia J. & Robert S. Nicol-----	37,459.42

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

4. Linda & Carl J. Miller -----	24,515.04
5. Richard L. Woehlert-----	53.00
6. Randy Lunde -----	59.58
7. Kevin Novine -----	95.99
8. Gary B. Davis -----	55.20
9. Leslie D. Bell -----	192.05
10. Jan Resnick -----	32.77

**JOURNAL OF THE SENATE [May 3, 1977]**

11. William I. Peters -----	460.00
12. Jo Ann Wiedmann -----	10.26
13. George Rogers -----	23.00
14. Sandra L. Bainbridge-----	22.88
15. Dane County, et al. -----	15,002.21
16. Robert E. Duckett-----	3,310.41
17. City of Waupun-----	471.14

In addition, the following claim, previously heard, was considered and decided without further hearing:

18. Rock County-----	22,979.55
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**THE BOARD FINDS:**

**1. Willis Lamberies**

Willis Lamberies, Gresham, Wisconsin, claims \$3,614.00 for services rendered to the Wisconsin National Guard and expenses from January 1 to February 3, 1975, during the takeover of the Alexian Brothers Novitiate. Claimant's property is 810 yards north of the Novitiate and was used as checkpoint #6 by both the Shawano County Sheriff's Department and later the Wisconsin National Guard. A claim for \$50.25 for plowing roads at checkpoints #5, 6 and 15 was withdrawn by the claimant at the hearing. The portion of the claim which is undisputed consists of services rendered for plowing an airport landing strip for helicopters (\$95.00), cleaning up loads of trash from other checkpoints (\$85.00), furnishing 15 gallons of gasoline (\$6.70) and providing lumber for building barricades (\$16.90). The claim of \$530.40 for the repair of claimant's barn roof was disputed, since evidence indicates a substantial amount of damage was caused in the first six days prior to the presence of the Wisconsin National Guard on claimant's property.

Although there was evidence that the Wisconsin National Guard was ordered not to walk upon claimant's barn roof, other evidence indicates that persons were upon the barn roof after the presence of the Wisconsin National Guard, and the Board finds that claimant should be awarded one-half of the cost of repair of said roof, or \$265.20. Any bullet holes in the roof would have occurred during the first six days of occupation of the claimant's premises by the Shawano County Sheriff's Department. Claimant also seeks \$350 for the loss of one heifer, but there is no substantial evidence indicating that the loss of said heifer was due to the causal negligence of any employe, agent or officer of the state. Said heifer had been placed into the custody of claimant prior to its disposal,

but claimant was unable to ascertain the cause of its death to the Board. The balance of the claim is for the rental of claimant's home and barn to the Wisconsin National Guard for 28 days (\$1,400.00), increased mileage expense to the claimant because claimant could not use the road adjacent to his property (\$150.00), and rental expense of the claimant who moved out of his house with his family and lived elsewhere for 28 days with his son (\$980.00).

The Board finds that these last three mentioned items are claims for which the state is not liable on legal or equitable principles. The claimant showed a generally cooperative attitude towards the presence of the Wisconsin National Guard. However, there also is evidence that the claimant's premises could have been abandoned if they had not been made available to the Guard. There was never any understanding that claimant would be reimbursed for the use of the premises by the Guard, and the presence of the Guard was not conditioned upon the receipt of any funds. Actually, the presence of the Guard contributed toward the protection of the claimant's property.

The claimant's home basement and barn haymow were the premises used by the Guard, and these premises were utilized to provide radio and field telephone communications on a continuing basis. Also occasional conferences were held on the premises. The claimant was never informed by the Guard that he had to abandon his property, and every effort was made to have the Guard's presence not interfere with the claimant's ordinary use of his property. The Board concludes the claim in the reduced amount of \$468.80 should be paid on equitable principles, and the balance of the claim is denied.

## 2. *Jean Husten*

Jean Husten, Waukesha, Wisconsin, claims \$583.45 for attorney fees incurred for representation before the Personnel Board relating to her improper classification as Typist II. After the denial of her requests for reclassification to reflect the actual duties she was performing, she pursued the matter with the Personnel Board. As a result of this action, her position was upgraded to a Clerk III, retroactive to May 12, 1975. The litigation of this matter may not be final, and there may be further proceedings. Although claimant could have represented herself before the Personnel Board, she was informed that if she wanted someone to appear for her she would have to retain the services of an attorney. As a matter of fact, in 1975 the Personnel Board rendered final decisions in 66 cases and of that amount 32 cases involved

## JOURNAL OF THE SENATE [May 3, 1977]

claimants represented by attorneys and 34 claimants were unrepresented. Claimant was not told she had to have an attorney to represent her before the Personnel Board, because she had the alternative to represent herself. Claimant was under the distinct impression that without legal representation any likelihood of sustaining her position was slight. A majority of 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. (Hubbard dissenting; Main not participating at the request of the claimant.)

### 3. *Georgia J. and Robert L. Nicol*

Georgia J. and Robert L. Nicol, Tomah, Wisconsin, claim \$37,459.42, which represents the value of 749,188.44 yards of fill dirt at 5c per yard lost between 1965 and May 6, 1976. Claimants allege that the state should reimburse them, since the taking of their property for highway purposes prevented them from realizing the potential value of said fill dirt. In the alternative, they allege the state should have allowed them an income tax loss equal to said lost value. Claimants litigated the validity of these allegations in contested condemnation proceedings and contested tax proceedings, both of which resulted in the rejection of claimant's allegations. Claimants did not appeal said adverse decisions. It is not the function of the Claims Board to be a substitute for the procedures prescribed by statute for the appeal of contested cases. Moreover, on the basis of the evidence presented to it, the Claims Board has no reason to conclude the said prior decisions were in error. 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.

### 4. *Linda and Carl J. Miller*

Linda and Carl J. Miller, Wauwatosa, Wisconsin, claim \$24,515.04 for damages related to an incident at State Fair Park on August 10, 1974, when Mac Davis invited his audience to gather around him during a performance. As the crowd moved, claimants allege that an usher knocked down Linda and that she sustained injuries. There is insufficient evidence of causal negligence on the part of any state employes, agents or officers in connection with the incident, and any liability resulting from the actions of the performer should be pursued through his insurer. 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.



## JOURNAL OF THE SENATE [May 3, 1977]

5--9. *Richard L. Woehlert, Randy Lunde, Kevin Novine, Gary B. Davis and Leslie D. Bell*

Richard L. Woehlert, Randy Lunde, Kevin Novine, Gary B. Davis and Leslie D. Bell claim damages of \$53.00, \$59.58, \$95.99, \$55.20 and \$192.05, respectively, for items destroyed at a fire at the hobby shop of McNaughton State Camp at Lake Tomahawk on August 17, 1976. The state had assumed the responsibility for safeguarding the lost items, and the Board concludes the claims should be paid on equitable principles, except the claim of Leslie D. Bell should be reduced to \$112.05, and the claim of Kevin Novine should be reduced to \$45.99 because of the overstated value of the lamps in said claims.

10. *Jan Resnick*

Jan Resnick, Milwaukee, Wisconsin, claims \$32.77 for damaged jewelry, damaged clothing and medical expenses related to a struggle with a client at Mt. Sinai Hospital on August 16, 1976. Claimant is a hospital employe and the client was in the custody of the state. Client was disturbed and claimant used proper procedures in handling the client. The Board concludes the claim should be paid on equitable principles.

11. *William I. Peters*

William I. Peters, Oconto, Wisconsin, claims \$460.00 for damages to his car and related expenses caused by a foster child on escape status on December 4, 1976. The foster child came into claimant's yard and stole claimant's 1966 Chrysler, rolled it into a ditch, totalling it out. Consistent with the long-standing policy of the Board to deny relief for damages caused by foster children when on escape status, 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.

12--14. *Jo Ann Weidmann, George Rogers and Sandra L. Bainbridge*

Jo Ann Weidmann, Brookfield, Wisconsin, claims \$10.26 for damages caused to her car tire while parking at the University of Wisconsin-Milwaukee parking pavilion. George Rogers, Milwaukee, and Sandra L. Bainbridge, Waukesha, claim similar tire damage of \$23.00 and \$22.88, respectively, arising out of the same circumstances on November 18, 1976. Persons unknown pried loose and bent one of the spikes at the entry to the parking facility and broke off another spike. As a result, damage resulted to tires going over the bent spike. Although there appears to be no causal negligence on the part of the state or its employes, the Board

concludes the claims should be paid on equitable principles consistent with the recommendation of the office of legal counsel for the University of Wisconsin System.

15. *Dane County, Dodge County, Milwaukee County and the City of Beaver Dam*

Dane County, Dodge County, Milwaukee County and the City of Beaver Dam claim damages of \$8,491.59, \$1,368.76, \$5,033.86 and \$104.40, respectively, for expenses resulting from a prison disturbance at Waupun on July 21, 1976. The assistance was provided as set forth in the claims, and the amounts indicated appear appropriate with certain minor exceptions. Payment has been recommended by the Department of Health and Social Services. The claims have been audited. The City of Beaver Dam originally submitted a claim for \$108.00, but acknowledged it should be reduced to \$104.40, as noted in its letter of October 19, 1976. Also, Dodge County duplicated \$108.00 in its claim, which amount represents the same \$104.40 billing by the City of Beaver Dam, and accordingly the claim of Dodge County should be reduced by \$108.00 to \$1,260.76. The Board concludes that the claim, as adjusted, should be paid on equitable principles.

16. *Robert E. Duckett*

Robert E. Duckett, Waukesha, Wisconsin, claims \$3,310.41 for the amount of the purchase price of a lot, and expenses related to its ownership. The lot is located in the Town of Genesee. The basis for the claim is that the state changed the law relating to percolation tests after he purchased the lot, and prevented it from passing the necessary percolation tests. The lot was acquired on March 19, 1968, from a private party. Evidence was submitted indicating that even prior to its purchase the lot would not qualify for the installation of a private domestic sewage treatment and disposal system. (See Section H62.20 of the Wisconsin Administrative Code, registered April 1962.) Also, percolation tests conducted through the procedures as outlined in Section H65.06(1), registered July 1, 1956, would have indicated that a soil absorption system could not have been approved for this site. The Board concludes the claim is not one for which the state is legally liable nor one the state should assume and pay on equitable principles.

17. *City of Waupun*

City of Waupun claims \$471.14 for services related to a disturbance at the Wisconsin State Prison on July 21-22, 1976. Barricades were set up and assistance with emergency hospital

equipment was provided. The claim covers the cost of labor and use of trucks for those two days. The Board concludes the claim should be paid on equitable principles.

18. *Rock County*

Rock County claims \$22,979.55. While selling Department of Natural Resources hunting and fishing licenses, the county suffered losses in 1970 through 1974 because of uncollected accounts. Subagents selected by the county clerk did not pay over all their receipts from the sale of licenses. The county clerk was on a salaried basis and did not personally receive commissions from the state through the sale of the licenses. At the hearing the county reduced its claim to \$11,686.86. The county's position is that it is not responsible for the uncollected fees from the subagents which its own clerk did not collect or pay over to the county. The shortages had been known to the county for some time through the period involved, but the county had not used its best efforts to attempt to collect from its clerk or the subagents of its clerk. The Board finds that the subagents were not agents of the state, and the state is not liable for the uncollected fees. The case of *Trempealeau County v. State*, 260 Wis. 602 (1952), is distinguishable on its facts. In that case the county clerk was not a salaried county employe and was acting as an agent of the state and receiving commissions directly from the state. In the instant case the county appears to have breached its fiduciary relationship to the state for protecting fish and game license fee accounts, by virtue of its election under sec. 29.09, Stats., to supervise its salaried county clerk through the offices of its county treasurer rather than permitting its clerk to receive commissions directly from the state as an unsalaried officer. 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.

THE BOARD CONCLUDES:

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

Jean Husten  
Georgia J. and Robert S. Nicol  
Linda and Carl J. Miller  
William I. Peters  
Robert E. Duckett  
Rock County

**JOURNAL OF THE SENATE [May 3, 1977]**

**2. Payment of the following amounts to the following claimants is justified under sec. 16.007(6), Stats.:**

<b>Willis Lamberies -----</b>	<b>\$468.80</b>
<b>Richard L. Woehlert -----</b>	<b>53.00</b>
<b>Randy Lunde -----</b>	<b>59.58</b>
<b>Kevin Novine -----</b>	<b>45.99</b>
<b>Gary B. Davis -----</b>	<b>55.20</b>
<b>Leslie D. Bell -----</b>	<b>112.05</b>
<b>Jan Resnick -----</b>	<b>32.77</b>
<b>Jo Ann Weidmann-----</b>	<b>10.26</b>
<b>George Rogers-----</b>	<b>23.00</b>
<b>Sandra L. Bainbridge -----</b>	<b>22.88</b>
<b>City of Beaver Dam -----</b>	<b>104.40</b>
<b>City of Waupun -----</b>	<b>471.14</b>

**THE BOARD RECOMMENDS:**

**That payment of \$8,491.59 be made to Dane County, payment of \$1,260.76 be made to Dodge County and payment of \$5,033.86 be made to Milwaukee County for full and final payment of all services provided for the state in connection with a disturbance at Waupun State Prison on or about July 21, 1976.**

**Dated at Madison, Wisconsin, this 18th day of April, 1977.**

**GERALD D. KLECZKA**  
**Senate Finance Committee**

**VIRGIL D. ROBERTS**  
**Assembly Finance Committee**

**EDWARD M. PARSONS**  
**Representative of Governor**

**EDWARD D. MAIN**  
**Representative of Secretary of Administration**

**ALLAN P. HUBBARD**  
**Representative of Attorney General**

JOURNAL OF THE SENATE [May 3, 1977]

State of Wisconsin  
Claims Board

April 18, 1977

Don Schneider  
Senate Chief Clerk  
State Capitol  
Madison, Wisconsin 53702

Dear Mr. Schneider:

Enclosed is the report of the State Claims Board covering claims heard on April 4, 1977.

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.

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 4, 1977, upon the following claims:

<i>Claimant</i>	<i>Amount</i>
1. Nancy Zahn -----	\$ 279.68
2. Candace Bettinger-----	130.29
3. Silas Wright-----	11,194.50
4. Ray Omernick-----	1,355,729.20
5. Arlan Gunderson -----	150.00
6. Mr. & Mrs. Lester Van Alstine -----	199.33
7. Ann Reynolds -----	3,344.00

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

8. Wallace Drake -----	648.02
9. Margaret Crosby -----	2,263.53
10. Lazar related claims -----	See Schedule A

JOURNAL OF THE SENATE [May 3, 1977]

In addition, the following claims, previously heard, were considered and decided without further hearing:

11. James Cape and Sons Company -----	20,415.07
12. Leola J. and Jess R. Cullen -----	10,596.70

THE BOARD FINDS:

1. and 2. *Nancy Zahn and Candace B. Bettinger*

Nancy Zahn, Stevens Point and Candace B. Bettinger, Rhinelander, claim \$279.68 and \$130.29, respectively, for services rendered to the state from July 1, 1976, to October 1, 1976. Claimants had been informed by their supervisor that they would be paid at the Clerk III maximum level. However, for reasons unknown, they were paid at the Clerk III minimum level, inconsistent with the agreed upon terms of employment. Claimants were both on limited term employe status, and the review procedures of the Personnel Board were not available to them. Claimant Bettinger worked only part time. They were given the impression the matter would be corrected in time, and continued their employment with this understanding. The amount of the claims represent the difference between what they actually received and what they were originally told they would receive. The Board concludes the claims should be paid on equitable principles.

3. *Silas Wright*

Silas Wright, Madison, Wisconsin, claims \$11,194.50 for damages resulting from an accident between a train and claimant's car at a railroad crossing on August 14, 1975, at the access road to the Lone Rock Wildlife Unit in Richland County. Claimant has been reimbursed by his insurer for \$10,637.50 of the claim, and his insurer seeks subrogation in like amount. Since the accident occurred on state-owned property, claimant alleges liability under sec. 195.29(6), Stats. However, since said statute does not specifically provide that it applies to the state, the state is not a "person" within the meaning of the statute. Also, it is questionable if the state would be liable even if the statute applied. Claimant and his insurer have commenced litigation in Circuit Court against the railroad operating the line at said crossing. Consistent with the established policy of this Board not to award subrogation claims, and due to the lack of sufficient evidence establishing liability on the part of the state, its officers, agents or employes, 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.

## JOURNAL OF THE SENATE [May 3, 1977]

### 4. *Ray Omernick*

Ray Omernick, Wittenberg, Wisconsin, claims \$1,355,729.20 for rent to the state of four miles of stream on his property at the rate of 1c per foot per day for the years 1959-1977. Claimant's property is located at the Town of Franzen, Marathon County, and Town of Alban, Portage County. The two creeks involved have both been declared to be navigable waters in contested court proceedings. Claimant seeks compensation because the state restricts his free use of these navigable waters. However, a landowner owns property in Wisconsin subject to the public rights in any navigable waters flowing across his land. Claimant presents a claim for which relief cannot be granted under existing law. The Board concludes the claim is not one for which the state is legally liable, nor one which the state can assume and pay on equitable principles. (Member Main did not participate.)

### 5. *Arlan Gunderson*

Arlan Gunderson, Gilman, Wisconsin, claims \$150 for damages to his snowmobile caused by a snowmobile student driver on February 2, 1976, at the Gilman School grounds. Claimant is a voluntary instructor for the state who furnishes his snowmobile for instruction purposes. He and others perform such duties as a public service with little compensation, and, although there is no liability for payment of such claim by the state, the Board concludes the claim should be paid on equitable principles.

### 6. *Mr. and Mrs. Lester Van Alstine*

Mr. & Mrs. Lester Van Alstine, Salem, Wisconsin, claim \$199.33 for reimbursement of an income tax assessment paid by them on March 8, 1976. Although payment of the assessment prohibited claimant from litigating its validity, claimant asserts the assessment was in error. However, as the result of a very detailed explanation by a representative of the Wisconsin Department of Revenue, it does not appear that the assessment was significantly incorrect. It appears that the cost basis of claimant's property was properly determined, 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.

### 7. *Ann Reynolds*

Ann Reynolds, Milwaukee, Wisconsin, claims \$3,334.00 for the difference between the amount of pay she received from August 1975-September 1976 as a teacher at the Ethan Allen School and what she was told she would receive at the time of her employment. Claimant was a limited term employe and could not pursue the

## JOURNAL OF THE SENATE [May 3, 1977]

matter before the Personnel Board. The Department of Health and Social Services recommends payment of the claim after certain adjustments. The claim erroneously includes \$1,228.00 for teacher retirement which was, in fact, paid. Other errors in computing the claim reduce it to \$1,958.71, which reduced amount the Board recommends should be paid on equitable principles.

### 8. *Wallace Drake*

Wallace Drake, Waupun, Wisconsin, claims \$648.02 for items of personal property destroyed in a fire at the McNaughton Campsite at Lake Tomahawk on August 17, 1976. The Department of Health and Social Services had assumed some responsibility for said items. The number of items lost by claimant is disputed by the Department of Health and Social Services, and its original recommendation was to deny the claim in full. Some items claimed as lost in the fire apparently had been sent home by the claimant, and the value of other items is questioned. The Board concludes the value of the claim should be reduced to \$425.07, and the reduced claim should be paid on equitable principles.

### 9. *Margaret Crosby*

Margaret Crosby, Personal Representative in the Estate of Lloyd F. Crosby, Deceased, claims \$2,263.53 for reimbursement of inheritance taxes paid to the State of Wisconsin. Although claimant disputed the state's right to said taxes, she did not litigate the issue and paid the taxes. Subsequently, in another case involving a similar issue and a different taxpayer, the state's position was not sustained by the Supreme Court. However, since the claimant failed to pursue her remedy at law by making an appeal, this Board will not now grant relief, even though the current state of the law would support claimant's position. This Board does not function as an alternative to available statutory appeal procedures. The claimant's remedy was to appeal upon the Department of Revenue's determination of inheritance taxes within six months as provided under sec. 72.30(4), Stats. 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.

### 10. *Lazar related claims*

Lazar related claims. A series of claims listed on the attached Schedule A., which is hereby made a part of these findings and conclusions, relate to those claims made by Ralph Lazar and other employees similarly situated who overpaid their parking fees to the State of Wisconsin for 1975 at GEF #1. (See the decision of the



Claims Board dated December 31, 1976, relating to the claims heard December 13, 1976.) No claims were presented on December 13, 1976, involving persons who had not rented for the entire year of 1975. The theory upon which relief was granted to prior claimants precludes payment of claims to persons who did not rent spaces for the entire year of 1975. Accordingly, the Board concludes that payment of \$11.83 should be made for "regular" claimants on Schedule A and only \$7.11 for "buddy" claimants on Schedule A, except that in any event no payment should be made to any claimant who did not rent for the full year of 1975, as indicated by the phrase "(not a full year)" on Schedule A. Unless identified as "buddy" claimants, all claimants on Schedule A are "regular" claimants.

11. *James Cape and Sons Company*

James Cape and Sons Company was determined to be entitled to an undetermined amount of damages from the state according to the decision of the Claims Board dated April 22, 1976. On the basis of information subsequently related to this Board, it is the recommendation of this Board that the proper amount of damages which should be paid to this claimant is \$17,401.34, instead of \$20,415.07 originally claimed. (Members Roberts and Parsons not participating.)

12. *Leola J. and Jess R. Cullen*

Leola J. and Jess R. Cullen, Dodgeville, Wisconsin, claim \$10,956.70 for personal injuries, medical and other expenses, loss of earning, and loss of companionship in connection with an accident on December 5, 1975, at the University of Wisconsin-Platteville Williams Fieldhouse when a portable screen fell upon Leola J. Cullen. Apparently the screen fell when a door opened and a gust of wind blew the screen over on top of her. Although the Board concludes there is an insufficient showing of negligence on the part of the state's agents, officers and employees, the Board concludes that payment of \$1,000.00 is justified on equitable principles.

*Schedule A*

*Lazar Related Claims*

1. Vicki Dilorenzo
2. Charles T. Lye
3. Hugh E. Russell
4. Jahnine A. Loy
5. James L. Stelsel
6. Mary L. Poole

JOURNAL OF THE SENATE [May 3, 1977]

7. Mitzi Whitehead
8. Mary Higge
9. Antoinette Schwoegler (not full year)
10. Gloria Storch
11. Elaine Hendrickson (not full year)
12. William A. Johnson
13. Nancy K. Metcalf
14. Kendra DePrey
15. John C. Zinos
16. Stephen J. Reilly
17. Joseph McClain (not full year)
18. Lucille Molumby
19. D. E. Hilton
20. Harriet L. Bakken
21. Sue Dixon
22. R. M. Jerrick (not full year) (buddy)
23. Jim Halvorson
24. Marty Shannon
25. Ardis Achtering
26. Lela Marques (not full year)
27. Theodore Stenzel
28. Janet Ninedorf
29. Ellen Anderson
30. Richard Bullock
31. Gerald Gollilier
32. Arliss Halverson
33. Carl R. Schaefer
34. Clyde Bryant
35. Milo J. McFarland (not full year)
36. C. Meyer
37. Elizabeth Stanek
38. Dennis I. Hafer (buddy)
39. Edward C. Lawry
40. Delbert C. Blasdel
41. M. H. Olson
42. Loren R. Radcliffe
43. Frances Hartl
44. Gordon Helmeid (not full year)
45. Herb Anderson
46. Eloise Roberts
47. Ron Remy
48. Ergun I. Somersan
49. Charles J. Betthausen
50. William K. Von Kaas

**JOURNAL OF THE SENATE [May 3, 1977]**

51. Kathryn Elwers
52. Harold W. Rucks
53. Bob VanEtten
54. Freida Schroeder
55. Allan R. Potts
56. Gary Shealy
57. Mildred S. Kennedy
58. Mattie B. Heeren
59. Arline Bolson
60. Bernard Lechnir
61. Louis Dahl
62. Henry J. Kruschek, Jr.
63. Mary Ann Keller
64. Elaine Waterman
65. Bette B. Pedracine (not full year)
66. Patty Alderson
67. Elizabeth Derleth
68. Leonard Hovde (not full year)
69. Donald R. Weinkauff
70. Doris B. Graiewski (not full year)
71. Ruth A. Theisen
72. Stanley R. Spencer
73. Linda Pikol
74. Gloria Denruiter
75. Max Spaethe
76. Alan J. Dale
77. Hugh G. Kelly
78. Ronald J. Johnson
79. Betty J. Falch
80. Robin L. Barkenhagen
81. Donald J. Green
82. William J. Morrissey
83. Harry H. Nussberger
84. Uclair W. Brandt
85. Thomas W. Cramer
86. Jessie Jordan
87. Sandra E. Stull
88. Bertha Voigt
89. Jim R. Scott
90. Dorothy A. Schwenn
91. F. J. Walsh

**JOURNAL OF THE SENATE [May 3, 1977]**

**THE BOARD CONCLUDES:**

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

Silas Wright  
Ray Omernick  
Margaret Crosby  
Mr. and Mrs. Lester Van Alstine  
The ten claimants on the attached Schedule A after whose name appears "(not a full year)."

2. Payment of the following amounts to the following claimants is justified under sec. 16.007(6), Stats.:

Nancy Zahn-----	\$ 279.68
Candace Bettinger -----	130.29
Arlan Gunderson-----	150.00
Wallace Drake-----	425.07
Leola J. and Jess R. Cullen -----	1,000.00

The 81 claimants listed on Schedule A after whose name does not appear "(not a full year)", the amount of \$11.83, unless a "buddy" claimant, in which event the amount of \$7.11.

**THE BOARD RECOMMENDS:**

1. Payment of \$1,958.71 to Ann Reynolds, Milwaukee, Wisconsin for unpaid compensation as a teacher at the Ethan Allen School from August 1975 to September 1976.

2. Payment of \$17,401.34 to James Cape and Sons Company, Racine, Wisconsin, for additional expenses related to a road construction project due to unforeseeable causes beyond its control during a furious storm on July 14-15, 1972, near Menomonee Falls, Wisconsin.

Dated at Madison, Wisconsin, this 18th day of April, 1977.

**GERALD D. KLECZKA**  
Senate Finance Committee

**VIRGIL D. ROBERTS**  
Assembly Finance Committee

**EDWARD M. PARSONS**  
Representative of Governor

**JOURNAL OF THE SENATE [May 3, 1977]**

**EDWARD D. MAIN**  
Representative of Secretary of  
Administration

**ALLAN P. HUBBARD**  
Representative of Attorney  
General

**University of Wisconsin System**  
**Office of the President**  
**Madison, Wisconsin**

**Don Schneider**  
**Senate Chief Clerk**  
**Madison, Wisconsin**

**April 28, 1977**

**Senators:**

Chapter 339 of the Laws of 1975 created 36.25 (17) of the Wisconsin statutes and mandated the Board of Regents of the University of Wisconsin System to direct completion of a study of the feasibility and desirability of producing methane gas and wood alcohol for commercial and domestic use.

A copy of the published report of that study is herewith provided the 1977 Wisconsin Legislature as also prescribed by that statute.

The report, authored by Professor James C. Converse of the Agricultural Engineering Department of the UW-Madison, holds the production of methane gas and wood alcohol will not be economically feasible until the price of energy increases substantially. No suggestions for legislative action are offered, but the report does recommend that research be continued to develop the technical process of producing methane from animal manure and other organic wastes.

Sincerely,  
**JOHN C. WEAVER**  
President

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MESSAGE FROM THE ASSEMBLY

By Everett E. Bolle, chief clerk.

Mr. President:

I am directed to inform you that the assembly has passed and asks concurrence in::

**Assembly Bill 221**

**Assembly Bill 487**

Adopted and asks concurrence in:

Motions Under Joint Rule 7:

A joint certificate of condolence by Representative Roberts; cosponsored by Senator Offner for MRS. HELEN O'HEARN AND FAMILY on the death of Oliver O'Hearn.

A joint certificate of commendation by Representative Snyder; cosponsored by Senator Kleczka for AIR FORCE RESERVE FLYING WINGS on the occasion of their 25th anniversary.

A joint certificate of congratulations by Representative Hasenohrl; cosponsored by Senator Bablitch for RUSSELL D. KNAPP on the occasion of his retirement.

A joint certificate of commendation by Representative Kincaid; cosponsored by Senator Krueger for DAN SATRAN, SR. on the occasion of receiving the newsman's award.

A joint certificate of commendation by Representative Kincaid; cosponsored by Senator Krueger for WALTER DALLAGRANA on the occasion of his retirement.

A joint certificate of commendation by Representative Kincaid; cosponsored by Senator Krueger for FRITZ JOHNSON on the occasion of his retirement.

A joint certificate of commendation by Representatives Andrea and Dorff; cosponsored by Senator Maurer for PEACE OFFICERS SERVICE on the occasion of National Police Week.

A joint certificate of commendation by Representatives Gunderson and Loftus; cosponsored by Senator Risser for DAVID HERBST on the occasion of an outstanding hockey career.

**JOURNAL OF THE SENATE [May 3, 1977]**

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**A joint certificate of commendation by Representatives Gunderson and Loftus; cosponsored by Senator Risser for GEORGE GWOZDECKY on the occasion of an outstanding hockey career.**

**A joint certificate of commendation by Representatives Gunderson and Loftus; cosponsored by Senator Risser for JOHN TAFT on the occasion of an outstanding hockey career.**

**A joint certificate of congratulations by Representative Jackamonis and the Entire Membership of the Assembly; cosponsored by the Entire Membership of the Senate for ARCHBISHOP WILLIAM E. COUSINS on the occasion of the 50th anniversary of his ordination to the priesthood.**

**A joint certificate of congratulations by Representatives Conradt and Roth; cosponsored by Senator Lorge for NORMAN MAASS on the occasion of being named 1977 Outstanding Seymour Citizen.**

**A joint certificate of congratulations by Representatives Lee, Elconin and Lorman; cosponsored by Senators Adelman and Dorman for MILWAUKEE JEWISH COMMUNITY on the occasion of Israel Independence Day.**

**A joint certificate of commendation by Representatives Ellis and Behnke; cosponsored by Senator Goyke for LEO NICKASCH on the occasion of efforts in youth conservation programs.**

**A joint certificate of commendation by Representative Ellis; cosponsored by Senator Goyke for RAY WILLIAMS on the occasion of efforts in youth conservation programs.**

**A joint certificate of commendation by Representative Coggs; cosponsored by Senator Berger for ALL SECRETARIES on the occasion of National Secretaries Week, April 24-30, 1977.**

**A joint certificate of commendation by Representative Wahner; cosponsored by Senator McKenna for JOHN W. WYNGAARD**

## JOURNAL OF THE SENATE [May 3, 1977]

on the occasion of completing 40 years as a chronicler of Wisconsin State government and wishing him a speedy recovery.

A joint certificate of condolence by Representative Coggs; cosponsored by Senator Swan for THE FAMILY OF CLINTON ROSE on his death;

A joint certificate of congratulations by Representatives Plewa and Merkt; cosponsored by Senator Sensenbrenner for JOHN FRANK GUGG on his 50th birthday.

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### MESSAGE FROM THE ASSEMBLY CONSIDERED

#### **Assembly Bill 221**

Relating to review boards of physicians and optometrists to determine qualifications of persons to operate motor vehicles.

By Representatives Groshek, Potter, Lallensack, Vanderperren, Hanson, Murray, Schneider, Day, Menos, Mohn, Dueholm, Gerlach, Hasenohrl, Elconin, Czerwinski, Quackenbush, Schmidt, Kedrowski, Donoghue, DeLong, Tregoning, Barczak, Wahner and Lato.

Read first time and referred to committee on Commerce.

#### **Assembly Bill 487**

Relating to miscellaneous savings and loan provisions.

By Representatives Hanson, Olson, Dorff, Thompson and Pabst, by request of Bill Hotz, Gen. Counsel-Office of Savings and Loan Commissioner.

Read first time and referred to committee on Commerce.

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The above motions under joint rule 7 were read and concurred in enmasse.

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### MOTIONS UNDER SENATE RULE 97

A certificate of congratulations by Senator Van Sistine for the GREEN BAY WEST HIGH SCHOOL GIRL'S BASKETBALL TEAM on the occasion of their completion of a highly successful season.

Read and adopted.

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### MOTIONS UNDER JOINT RULE 7

A joint certificate of commendation by Senator Thompson; cosponsored by Representative Barry for the STOUGHTON COMMUNITY on the occasion of Syttende Mai 1977.

A joint certificate of congratulations by Senator McKenna; cosponsored by Representative Lorman for DR. EDWARD PFAU on the occasion of his retirement.

## JOURNAL OF THE SENATE [May 3, 1977]

A joint certificate of congratulations by Senator Kleczka; cosponsored by Representative Tuczynski for HANK KANTORSKI on the occasion of his receiving the St. George Award.

A joint certificate of congratulations by Senator Bidwell; cosponsored by Representative Thompson for JACK WHIRRY on the occasion of his retirement.

A joint certificate of commendation by Senator Parys; cosponsored by Representatives Moody and Leopold for the FIRST NEIGHBORHOOD CREDIT UNION on the occasion of its establishment and Grand Opening.

A joint certificate of congratulations by Senator Berger; cosponsored by Representative Kirby for the MILWAUKEE MADISON HIGH SCHOOL GYMNASTICS TEAM on the occasion of their winning first place in the WIAA state gymnastics tournament.

The above motions under joint rule 7 were read and adopted enmasse.

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### AMENDMENTS OFFERED

Senate substitute amendment 1 to **Senate Bill 306** by Senator Parys.

Senate substitute amendment 1 to **Senate Joint Resolution 4** by Senator Parys.

By request of Senator Sensenbrenner, with unanimous consent, the senate adjourned in honor of the birthday of Senator McCallum.

Upon motion of Senator Bablitch the senate adjourned until 10:00 A.M. Thursday, May 5.

10:16 A.M.

**JOURNAL OF THE SENATE [May 3, 1977]**

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**GUESTS**

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

**The fourth grade students from DeForest Elementary School, DeForest, guests of Senator Thompson.**

**The eighth grade students from Winneconne Middle School, Winneconne, with John Sandberg, guests of Senator Goyke.**