

JOURNAL OF THE SENATE

THURSDAY, August 4, 1977.

The chief clerk makes the following entries under the above date.

BILLS INTRODUCED

Read first time and referred:

Senate Bill 507

Relating to income taxation of resident estates and trusts and eliminating the tax credit for certain taxes paid to other jurisdictions.

By Senator Berger; cosponsored by Representative Wahner, by request of Mr. William Gardiner.

To committee on Education and Revenue.

Senate Bill 508

Relating to the required number of school days for state aid purposes.

By Senator Radosevich; cosponsored by Representative Mohn, by request of Mr. Maynard Olson, Hudson School District Elementary Coordinator.

To committee on Education and Revenue.

PETITIONS AND COMMUNICATIONS

State of Wisconsin
Department of State

July 26, 1977.

To the Honorable, the Senate

Senators:

I have the honor to transmit to you pursuant to s. 13.67, a list of the following lobbyists who have cancelled their registration for the duration of the 1977-78 legislative session:

Robert J. Andersen; Legal Action of Wisconsin, Incorporated (formerly Milwaukee Legal Services), as of June 30, 1977.

James Boullion; Rehabilitation Facilities of Wisconsin, as of July 25, 1977.

JOURNAL OF THE SENATE

Mark R. Conrad; League of Wisconsin Municipalities, as of July 15, 1977.

John W. Dewey; Wisconsin Newspaper Association, as of July 14, 1977.

Margaret Lewis; Wisconsin Council of Churches, as of June 30, 1977.

Sincerely,
DOUGLAS LAFOLLETTE
Secretary of State

State of Wisconsin
Department of State

July 25, 1977.

To the Honorable, the Senate

Senators:

I have the honor to transmit to you pursuant to s. 13.67 (2), the names of the registered lobbyists for the period beginning on July 1, 1977, and ending on July 25, 1977.

Yours very truly,
DOUGLAS LAFOLLETTE
Secretary of State

Name, Address and Occupation of Lobbyist -- Name and Address of Employer -- Subject of Legislation Code Number -- Date of Employment.

Anderson, Jeffrey M., 110 East Main Street, #713, Madison, Wisconsin 53703 -- Wisconsin Professional Police Association, 1922 Keyes Street, Madison, Wisconsin 53711 -- 04, 06, 09, 10, 11, 12, 14, 15, 16, 17, 20, 21, 22, 28 -- July 12, 1977.

Brady, Allen B., 133 South Butler Street, Madison, Wisconsin 53703 -- Allied Mechanical Employers Council, Incorporated, 133 South Butler Street, Madison, Wisconsin 53703 -- 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 21, 23, 30 -- July 1, 1977.

Donoian, Harry A., 3427 West Saint Paul Avenue, Milwaukee, Wisconsin 53208 -- District Council 48 AFSCME (AFL-CIO), 3427 West Saint Paul Avenue, Milwaukee, Wisconsin 53208 -- 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 28, 29, 30 -- July 1, 1977.

JOURNAL OF THE SENATE

Goldberg, Melvin L., 520 University Avenue, Madison, Wisconsin 53703 -- Center for Public Representation, 520 University Avenue, Madison, Wisconsin 53703 -- 07, 26 -- July 15, 1977.

LaFave, Reuben, Route #1, Oconto, Wisconsin 54153 -- Wisconsin Counties Mineral Resources Association, Incorporated, 1025 Bird Street, Wausau, Wisconsin 54401 -- 06, 07, 11, 12, 13, 14, 16, 21, 22, 23, 25, 26, 29, -- June 30, 1977.

Mestre, Louis J., 1006 South Sixteenth Street, Milwaukee, Wisconsin 53217 -- Milwaukee Tenants Union, 1725 South Twelfth Street, Milwaukee, Wisconsin 53204 -- 19, 22 -- July 1, 1977.

Legislative Subject Identification

Code	Subject
01	<i>Agriculture, horticulture, farming & livestock</i>
02	<i>Amusements, games, athletics and sports</i>
03	<i>Banking, finance, credit and investments</i>
04	<i>Children, minors, youth & senior citizens</i>
05	<i>Church & Religion</i>
06	<i>Consumer Affairs</i>
07	<i>Ecology, environment, pollution, conservation, zoning, land & water use</i>
08	<i>Education</i>
09	<i>Elections, campaigns, voting & political parties</i>
10	<i>Equal rights, civil rights & minority affairs</i>
11	<i>Government, financing, taxation, revenue, budget, appropriations, bids, fees & funds</i>
12	<i>Government, county</i>
13	<i>Government, federal</i>
14	<i>Government, municipal</i>
15	<i>Government, special districts</i>
16	<i>Government, state</i>
17	<i>Health services, medicine, drugs and controlled substances, health insurance & hospitals</i>
18	<i>Higher education</i>
19	<i>Housing, construction & codes</i>
20	<i>Insurance (excluding health insurance)</i>
21	<i>Labor, salaries and wages, collective bargaining</i>
22	<i>Law enforcement, courts, judges, crimes & prisons</i>

JOURNAL OF THE SENATE

- 23 *Licenses & permits*
- 24 *Liquor*
- 25 *Manufacturing, distribution & services*
- 26 *Natural resources, forests and forest products, fisheries, mining & mineral products*
- 27 *Public lands, parks & recreation*
- 28 *Social insurance, unemployment insurance, public assistance & workmen's compensation*
- 29 *Transportation, highways, streets & roads*
- 30 *Utilities, communications, television, radio, newspapers, power, CATV, & gas*
- 31 *Other*

State of Wisconsin Claims Board

July 26, 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 June 27, 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.

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

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

JOURNAL OF THE SENATE
BEFORE THE
CLAIMS BOARD OF WISCONSIN

The Claims Board conducted hearings at the State Capitol Building, Madison, Wisconsin, on June 27, 1977, on the claim of Joseph W. Hurst in the amount of \$7990.00 as compensation for wrongful imprisonment under sec. 285.05, Stats.

In *Hurst v. State*, 72 Wis.2d 188, 240 N.W.2d 392 (1976), the Wisconsin Supreme Court reversed the claimant's conviction under sec. 161.30(1) (a)1 and (2), Stats. (1969), for the felonious delivery of phencyclidine. The court concluded that the complaint failed to detail sufficiently all the facts to establish probable cause. The sentence was vacated and the action dismissed.

Claimant had been sentenced to serve a term of imprisonment of three years in the Green Bay Reformatory, commencing August 6, 1973. On February 6, 1975, he was placed on parole for the balance of his sentence which would terminate on August 6, 1976. While under parole he absconded from supervision. His lack of cooperation resulted in his removal from records as an absconder with a warrant for his arrest having been issued March 16, 1976, which was subsequently dismissed as a result of the supreme court decision of April 7, 1976.

Section 285.05(2), Stats., provides:

"Any person who serves a term of imprisonment under conviction for a crime, of which crime he claims to be innocent, or any person who has been pardoned on the ground of innocence and whose imprisonment is thereby shortened, may petition the claims board for compensation for such wrongful imprisonment."

A person whose prison term was shortened by reversal of his conviction is not entitled to the benefits of the statute. Section 285.05 provides benefits for only two classes of persons: (1) those who "serve a term of imprisonment" and (2) those who have "been pardoned on the ground of innocence and whose imprisonment is thereby shortened." See, also, *LeFevre v. Goodland*, 247 Wis. 512, 514, 19 N.W.2d 884 (1945). The claimant neither served his term nor had it shortened by a pardon on the grounds of innocence. In such a case it has long been held that sec. 285.05 does not apply and the Claims Board has no authority or jurisdiction to award him any compensation. If he has any remedy it is to apply to the

JOURNAL OF THE SENATE

Legislature for compensation, since the agent appointed by the Legislature has not been given authority by it to deal with such cases.

The doctrine here being applied was first laid down by Judge Stevens of the Dane county circuit court on July 12, 1921, in the case of *In re Eli J. Long* (apparently the same case in which an appeal to this court was attempted in the case of *Petition of Long*, 176 Wis. 361, 187 N.W. 167 (1922)). Judge Stevens' opinion is quoted in part in 11 Op. Att'y Gen. 872 (1922) at page 873 as follows:

“ The question presented is what was the intent of the legislature in enacting the statute here in question. That intent is to be gathered from the language used by the legislature, viewed in the light of well established rules of statutory construction. A statute should be so construed as to give force and effect to all its provisions. If the meaning urged by applicant be given to the phrase “term of imprisonment” it renders nugatory the provision “or any person who shall have been pardoned by the governor on the ground of innocence and whose term of imprisonment shall thereby have been decreased.” Subdivision 2 of section 3203a of the statutes. If the phrase “term of imprisonment” as used in the first line of this subdivision of the statutes includes periods of imprisonment which are less than the term fixed by the court, then it would be wholly unnecessary to add the provision as to pardon by the governor quoted above, because under the interpretation urged by applicant any one whose term is shortened by pardon would have come within the provisions of the statute without the enactment of the provision quoted above.

“ The fact that the legislature has expressly provided that the statute shall apply to periods of imprisonment shortened by pardon, by familiar [sic] rules of statutory construction evidences a legislative intent not to apply the statute to cases in which the term of imprisonment is shortened by other means than the pardon of the governor.’ ”

So far as we are able to ascertain, this decision has been followed ever since. In 1922 it was given publicity by publication in the reports of the Attorney General's opinions and the Legislature has not seen fit to amend the statute in substance since that time. It

JOURNAL OF THE SENATE

is submitted that Judge Stevens' construction was entirely correct, but even if the statute were considered to be ambiguous so as to be open to a construction which would let in a case like the present one, still the long-standing interpretation of the statute, acquiesced in by the Legislature for more than fifty years, should not be lightly set aside.

THE BOARD FINDS:

The Board also notes that claimant plead guilty to the complaint, thereby contributing to his own conviction and imprisonment. Claimant did not claim to be innocent of the crime for which he was convicted. If the delivery of phencyclidine is not a crime, then the claimant would not have been convicted of a "crime", and there would not be any statutory basis upon which to grant him relief. Relief under sec. 285.05, Stats., depends upon conviction for a crime of which crime he claims to be innocent, and a finding of innocence by this Board. The Board finds that it is not clear beyond a reasonable doubt that claimant was innocent of the "crime" for which he was sentenced to a term of three years of imprisonment.

The claim is denied.

Dated at Madison, Wisconsin, this 26th day of July, 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

State of Wisconsin Claims Board

July 29, 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 June 27, 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.

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

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 June 27, 1977, upon the following claims:

<i>Name of Claimant</i>	<i>Amount</i>
1. Gayle Schwibinger -----	\$ 513.55
2. Town of Shelby -----	88,060.00
3. Patrick McCormick -----	75.00
4. Deborah Jansen -----	434.95
5. Highway Pavers Inc. -----	28,282.03
6. Bill Becker -----	6,900.00
7. Doris Valenick-----	5,318.79
8. Even Rees Roberts -----	5.19

JOURNAL OF THE SENATE

9. Bruce Maves-----	86.56
10. Gerovac Wrecking Co., Inc.-----	12,496.88

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

11. Raymond Lane-----	\$ 18.00
12. Neil Stewart-----	285.00
13. Bammel Funeral Home-----	355.00
14. Carl Westberg-----	20.80
15. Pitsco, Inc.-----	450.00
16. Peter Cichucki-----	1,041.88
17. Roy Callies-----	7.11
18. Eunice Peterson-----	7.11
19. Daniel Smith-----	11.83
20. Roland Budnar-----	11.83
21. James Plourde-----	7.11
22. Glenn Holmes-----	11.83

THE BOARD FINDS:

1. *Gayle Schwibinger*

Gayle Schwibinger claims \$513.55 for damage to her car on June 22 and June 24, 1976, at the University of Wisconsin-Milwaukee parking ramp. Lime deposits dripped on claimant's car after a light rain, causing permanent discoloration to plaintiff's vehicle. Claimant's insurance company will reimburse her for \$348.66 for said damages. The Board finds there is insufficient evidence of damages exceeding those allowable by claimant's insurance carrier, and concludes the balance of the claim should not be paid on legal or equitable principles. The claim is denied.

2. *Town of Shelby*

Town of Shelby claims \$88,060.00 as its unpaid share of the 1972, 1973 and 1974 tax distributions under sec. 16.96 and ch. 79, Stats. The claim is based upon a corrected 1970 federal census, the results of which were known on March 10, 1976. The original federal census indicated a population for the Town of Shelby of 3,733 persons. The corrected 1970 census figure was for 4,600 persons. The incorrect federal census figure resulted in the Town of Shelby receiving less than it would have otherwise received under Wisconsin's tax sharing laws for the years 1973, 1974 and 1975. An adjustment was made to correct the 1975 figure, as provided by law, but the Department of Administration and the Department of Revenue were unable to make the corrections to the 1973 and 1974 distributions due to a lack of appropriate legislative authority which

JOURNAL OF THE SENATE

would allow for such adjustments. The matter was litigated in the Dane County circuit court, Case No. 152-453, and on January 18, 1977, the court granted the state's motion to quash the alternative writ of mandamus brought against the Secretary of the Department of Administration and the Secretary of the Department of Revenue. The motion was granted on the grounds that the court was unable to find a clear duty under the statute or common law which would enable these state administrative officers to make the corrections sought for by the Town of Shelby for the years 1972, 1973 and 1974.

A majority of the members of the Board participating in this hearing find that the Town of Shelby should have made timely objections to the population estimates made by the state for the years 1972, 1973 and 1974, as provided by statute. The error correction in the federal census was about 20%. A majority of the Board finds that such a large error should have been recognized and pursued by the Town of Shelby in a more timely fashion through the procedures provided.

It must be pointed out that the State of Wisconsin made no error in determining its population estimates. The statute requires the state to rely upon the federal decennial census. The state had no reason to believe there was an error in the 1970 census. An error of approximately 20% should have been known, however, to the Town of Shelby long before 1976. The state voluntarily made the correction it could make under the law for the year 1975, once being advised of the error in the federal census. If the Town of Shelby had been more diligent in pursuing this error in the federal census years earlier, the State of Wisconsin also could have made more adjustments to the population estimates and shared tax distributions.

It should also be noted that under any circumstances, the claim submitted by the Town of Shelby is excessive. Under the formula in use for the year 1972, even if the corrected federal census figures had been used, the Town of Shelby would have received nothing in excess of what it actually did receive even under the erroneous federal figures. Its underpayment for 1973 and 1974 also would be less than that claimed by the Town of Shelby because 16 1/4% of the amount claimed would represent the amount actually paid to the county in which the Town of Shelby is located. The exact amount of money which the Town of Shelby would have received if the correct federal census figures had been known earlier cannot be

JOURNAL OF THE SENATE

accurately calculated unless an expenditure of approximately \$10,000 were to be made by the state to redetermine the amount. Because of the manner in which the formula operates, any increase in the amount paid to the Town of Shelby would reduce the amounts paid to other municipalities, and in this case the City of La Crosse in particular would have had the amount of its distribution reduced. A majority of the Board participating in this hearing 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. (Member Roberts dissenting; Members Hubbard and Main, not participating.)

3. *Patrick McCormick*

Patrick McCormick claims \$75.00 for the return of a room deposit from the University of Wisconsin at Eau Claire. Claimant entered into a standard contract for the full academic year under the terms of which any request for a refund of his deposit had to be made by June 1, 1976. No such request was made by the claimant. Under the terms of the contract the deposit was forfeited. The Board determines 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. *Deborah Jansen*

Deborah Jansen claims \$434.95. Due to an error by an employe of the University of Wisconsin system, the claimant's health insurance policy was improperly cancelled without notice to the claimant. In August of 1976, claimant incurred medical expenses that would have been covered by the insurance policy which was cancelled. The Board concludes the claim should be paid on equitable principles.

5. *Highway Pavers Inc.*

Highway Pavers Inc., claims \$28,282.03 as reimbursement for extra costs incurred for traffic control to complete project 1061-2-71. The claimant alleges that the Department of Transportation did not allow the claimant enough time to complete the project. The project called for a lump sum bid for the traffic control portion of the contract. The bid requests to the subcontractors were made in reliance upon an analysis made by the Department of Transportation as to the amount of time that would be needed to complete the project. After construction commenced, it became apparent that the original time for completion projections made by the Department of Transportation were incorrect. The Highway Commission allowed claimant additional time to complete the project; however, the Commission denied claimant extra costs

JOURNAL OF THE SENATE

incurred for traffic control. The Board concludes that the claimant had the responsibility to determine whether or not the projections made by the Department of Transportation were reasonable before entering into the contract to complete the project. This is not a situation involving a change in physical conditions which were unknown to the parties at the time that the contract was entered into as contemplated under sec. 109.9 of the standard specifications for road and bridge construction. 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.

6. *Bill Becker*

Bill Becker claims \$6,900.00 for the loss of pheasants caused by drought conditions and due to the presence of wild mink on his property in August and September of 1976. The lack of sufficient rainfall is beyond the control of the state, and the state is not an insurer for losses resulting from the perils of nature. There is no record of a written complaint having been filed by the claimant under sec. 29.596, Stats., which would authorize the Department of Natural Resources to capture or destroy wild animals causing damage to the owner or lessee of land. Nor is there any record of any mink having been turned over to the Department for disposal. The Department does not have authority to pay damage claims caused by either drought conditions or mink after the damage has occurred. 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. *Doris Valenick*

Doris Valenick claims \$5,318.79 as the result of a fall to the floor when sitting in a metal folding-type chair which collapsed in the tavern-on-the-mall section of the Wisconsin State Fairgrounds on August 19, 1974. About 35 minutes after the fall and after claimant had finished her lunch and was in the grandstand for an auto race, she became pale and weak and went to the first aid area. Claimant was taken to the hospital and placed in the intensive care unit of the cardiac ward. There is no conclusive evidence that claimant's accident precipitated her impending heart attack. The basic problem of her heart disease certainly preexisted the accident. There is no proof that the trauma of the accident aggravated the underlying coronary artery disease. The insurance carrier of claimant's husband has paid \$10,303.88 of claimant's medical expenses. The unpaid portion of her expenses total the \$5,318.79 claimed. The area in which the chair incident occurred was under the jurisdiction of an independent contractor with the state. This

JOURNAL OF THE SENATE

contractor was not an agent or employe of the State of Wisconsin at any time material to the incident.

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.

8. *Evan Rees Roberts*

Evan Rees Roberts claims \$5.19 for reimbursement for the mysterious disappearance of his fur hat on or about January 25, 1977, at the Southern Wisconsin Center in Union Grove. There is no evidence that the hat was stolen by a state employe or someone for whom the state was responsible. There is no showing of negligence on the part of any state officer, agent or employe 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.

9. *Bruce Maves*

Bruce Maves claims \$86.56 for the loss of a television set, photographs and a typewriter on January 20, 1977, at the Wisconsin State Reformatory. Claimant alleges that his cell was fire bombed. There is some evidence that the television set in claimant's cell was responsible for starting the fire. It is not clear how the fire started. Claimant had entered into an agreement with the State of Wisconsin to relieve the state from any responsibility if either his typewriter or television set was lost, stolen or damaged. 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. *Gerovac Wrecking Co., Inc.*

Gerovac Wrecking Co., Inc., claims \$12,496.88 for the return of liquidated damages assessed against it in the amount of \$8,200, plus legal costs of \$4,296.88, relating to project no. I 794-8 (4) 309 for the Division of Highways. There were 164 days run-over time on the contract. Claimant's reasons for the delay in completing the work within the time allotted under the contract were: 1) 52 days due to an illegal strike caused by a Teamsters Local, which computes out to 52 days times \$50, or \$2,600; 2) 29 days due to inclement weather, which computes out to 29 days times \$50, or \$1,450; and 3) 40 days due to the presence of personal property in one of the buildings that claimant was to demolish, which computes out to 40 days times \$50, or \$2,000. Claimant was threatened with possible litigation if he moved the personal property without authorization of the owner.

JOURNAL OF THE SENATE

The illegality of the strike was established by a decision of the Wisconsin Supreme Court. However, the legal expenses of \$4,296.88 incurred as a result of that litigation do not constitute expenses for which the state is legally liable nor expenses which the state should assume and pay on equitable principles.

Also, since the number of days for which reimbursement is sought totals only 121 calendar days instead of 164 calendar days, there is no basis for providing relief to the claimant for 43 days at \$50 per day.

The remaining 121 calendar days resulted in the assessment of liquidated damages of \$6,050. Since 29 of these 121 days were for inclement weather which occurred after the expiration of the contract time, it is the Board's conclusion that the state should not provide equitable relief to the claimant for the 29 days lost because of the inclement weather. However, it is the Board's conclusion that the remaining 92 days were due to factors beyond the control of the claimant, and he should be paid \$4,600 for 92 days at the rate of \$50 per day, on equitable principles.

11. *Raymond Lane*

Raymond Lane claims \$18 for one pair of pants damaged while fighting a fire at the Community Correctional Center in Milwaukee, Wisconsin, on February 18, 1977. The timely and appropriate action taken by claimant and others prevented a greater loss from occurring. The Board concludes that the claim should be paid on equitable principles.

12. *Neil Stewart*

Neil Stewart claims \$285 for the loss of one of his beef cows which fell through the ice near a beaver dam in Buffalo County on February 4, 1977. The beaver dam had been constructed in the creek on claimant's property, and water in the area had been backed up by the dam to a depth of 4 to 5 feet, while the average flow of the creek is not more than 2 feet. Although sec. 29.59, Stats., authorizes the Department of Natural Resources to remove beaver dams causing damage, the Department cannot lawfully trespass on the owner's land for that purpose. The consent of the owner or occupant of the land is required prior to removal, but the owner or occupant is liable for damages arising from the structure if he fails to give consent after notice and solicitation. Claimant has had a beaver dam in the area where the damage occurred for several years prior to the accident but never took steps to have it removed, according to the records of the Department of Natural Resources. The Board concludes the claim is not one for which the

JOURNAL OF THE SENATE

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

13. *The Bammel Funeral Home*

The Bammel Funeral Home claims \$355 for the balance due for burial services totalling \$655 furnished to the Wisconsin Veterans Home on April 17, 1976. As a result of ch. 39, Laws of 1975, the maximum that could be allowed for the funeral services under these circumstances was limited to \$300, pursuant to sec. 45.37 (11), Stats. Because of the precise terms of the statute, 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.

14. *Carl Westberg*

Carl Westberg claims \$20.80 for damage to his ring while placing a hydraulic jack in position by a door to enable him to enter a room where a boy was barricaded at the Lincoln Hills School at Irma, Wisconsin, on August 4, 1976. The action taken by the claimant was appropriate under the circumstances and the Board concludes that the claimant should be reimbursed for the damage to his ring in the amount of \$20.80, on equitable principles.

15. *Pitsco, Inc.*

Pitsco, Inc., claims \$450 for damage to a numerical control machine which was being exhibited at the 1976 Wisconsin Industrial Education Association conference in Milwaukee on October 27, 1976. Claimant alleges the machine was knocked off its display stand by a student of the University of Wisconsin-Platteville. There is some evidence that the claimant was negligent in the manner in which it set up its display stand. One of the legs of the display stand extended underneath the curtain which divided the display areas, and came into the UW-Platteville display area, thereby contributing to the accident and damage to the machine. The Board finds that there is an insufficient showing of negligence on the part of state employes, agents or officers, and 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.

16. *Peter Cichucki*

Peter Cichucki claims \$1,041.88 for damage to his car at the staff parking lot at Gordon State Camp on February 11, 1977. Claimant alleges that his car was sabotaged and that a large amount of granulated sugar was placed in his gas tank while he was parked. The person or persons responsible for the sabotage of claimant's vehicle at Gordon Camp remain unknown. There is an insufficient showing to establish that the claimant's damages were

JOURNAL OF THE SENATE

the result of the negligence of state officers, agents or employes, or by any person under the direct custody and control of the state. The Board concludes the claim is not one which the state is legally liable nor one which the state should assume and pay on equitable principles.

17 -- 22. *Roy Callies, Eunice Peterson, Daniel Smith, Roland Budnar, James Plourde and Glenn Holmes*

Roy Callies, Eunice Peterson, Daniel Smith, Roland Budnar, James Plourde and Glenn Holmes claim reimbursement for the overcharge of their 1975 fees for parking at General Executive Facility No. 1 in Madison. Since James Plourde did not rent a space for the entire year of 1975, his claim must be denied. However, based upon the reasoning of this Board for other similar claims, claimants Roy Callies and Eunice Peterson, who rented "buddy" stalls for all of 1975, are entitled to a refund of \$7.11, and claimants Daniel Smith, Roland Budnar and Glenn Holmes are entitled to refunds of \$11.83.

THE BOARD CONCLUDES:

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

Gayle Schwibinger
Town of Shelby
Patrick McCormick
Highway Pavers Inc.
Bill Becker
Doris Valenick
Evan Rees Roberts
Bruce Maves
Neil Stewart
Bammel Funeral Home
Pitsco, Inc.
Peter Cichucki
James Plourde

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

Deborah Jansen	\$434.95
Raymond Lane	18.00
Carl Westberg	20.80
Roy Callies	7.11

JOURNAL OF THE SENATE

Eunice Peterson	7.11
Daniel Smith	11.83
Roland Budnar	11.83
Glenn Holmes	11.83

THE BOARD RECOMMENDS:

Payment of \$4,600 to Gerovac Wrecking Co., Inc., for the payment of liquidated damages withheld for 92 days of run-over time at \$50 per day, relating to project no. I 794-8(4) 309.

Dated at Madison, Wisconsin, this 28th day of July, 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

CHIEF CLERK'S REPORT

The chief clerk records:

Senate Bill 28
Senate Bill 78, and
Senate Bill 83

Correctly enrolled and presented to the Governor on August 3, 1977.

JOURNAL OF THE SENATE

EXECUTIVE COMMUNICATIONS

**State of Wisconsin
Office of the Governor
Madison, Wisconsin**

August 3, 1977.

To the Honorable, the Senate:

The following bills, originating in the senate, have been approved, signed and deposited in the office of the Secretary of State:

Senate Bill	Chapter No.	Date Approved
28 -----	78 -----	August 3, 1977
78 -----	79 -----	August 3, 1977
83 -----	80 -----	August 3, 1977

Sincerely,

MARTIN J. SCHREIBER

Governor

AMENDMENTS OFFERED

Senate amendment 1 to Senate Bill 392 by Senator Braun.