

JOURNAL OF THE SENATE

Eighty-Third Regular Session

WEDNESDAY, November 16, 1977.

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

BILLS INTRODUCED

Read first time and referred:

Senate Bill 617

Relating to sales and use tax exemptions for the gross receipts from charges for printing and imprinting.

By Senator Adelman.

To Joint Survey Committee on Tax Exemptions.

Senate Bill 618

Relating to exclusion of relatives from coverage of motor vehicle liability policies.

By Senator Sensenbrenner.

To committee on Commerce.

Senate Bill 619

Relating to creditable service under the Wisconsin retirement fund for certain probationary employment periods.

By Senators Thompson, Parys and Keppler; cosponsored by Representatives Looby, McClain and DeLong, by request of Wisconsin Council of County and Municipal Employees, Council 40, AFSCME; Wisconsin Professional Fire Fighters Association, AFL-CIO; Wisconsin Professional Police Association, Milwaukee District Council 48, AFSCME.

To Joint Survey Committee on Retirement Systems.

Senate Bill 620

Relating to permitting automobiles and station wagons to be registered for a 3-year period at a reduced fee.

By Senators Parys, Keppler and Lasee.

To committee on Commerce.

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COMMITTEE REPORTS

The committee on Commerce reports and recommends for introduction:

Senate Bill 621

Relating to engaging in real estate business by qualified persons prior to physical issuance of a license.

Introduction:

Ayes, 7 -- Senators Parys, Berger, Swan, Goyke, Keppler, Bidwell and Petri;

Noes, 0 -- None.

Read first time and referred to committee on Commerce.

And further recommends:

Assembly Bill 860

Relating to regulation of raffles, granting rule-making authority, making an appropriation and providing penalties.

Introduction of senate amendment 1:

Ayes, 7 -- Senators Parys, Berger, Swan, Goyke, Keppler, Bidwell and Petri;

Noes, 0 -- None.

Senate Bill 256

Relating to creating a definition for "mass transit" and "mass transit facility".

Passage:

Ayes, 7 -- Senators Parys, Berger, Swan, Goyke, Keppler, Bidwell and Petri;

Noes, 0 -- None.

Senate Bill 402

Relating to exempting air taxi operators from state assessment and levy of property taxes under chapter 76 of the statutes.

Passage:

Ayes, 6 -- Senators Parys, Swan, Goyke, Keppler, Bidwell and Petri;

Noes, 1 -- Senator Berger.

Assembly Bill 691

Relating to measurement of loss for property insurance.

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Concurrence:

Ayes, 7 -- Senators Parys, Berger, Swan, Goyke, Keppler, Bidwell and Petri;

Noes, 0 -- None.

Assembly Bill 740

Relating to strobe lights on school busses and granting rule-making authority.

Concurrence:

Ayes, 5 -- Senators Parys, Berger, Swan, Goyke and Keppler;

Noes, 2 -- Senators Bidwell and Petri.

RONALD G. PARYS

Chairman

PETITIONS AND COMMUNICATIONS

Senate Petition 114

A petition by 30 residents of the State of Wisconsin in opposition to Assembly Bill 321, relating to prohibiting and restricting state and local abortion subsidies.

By Senator Thompson.

Read and referred to committee on Human Services.

Senate Petition 115

A petition by 42 residents of the State of Wisconsin in support of product liability legislation: Senate Bill 437, Senate Bill 438, Senate Bill 439, Senate Bill 440, Senate Bill 441, Senate Bill 445 and Assembly Bill 237.

By Senator Goyke.

Read and referred to committee on Commerce.

Senate Petition 116

A petition by 20 residents of the State of Wisconsin in support of product liability legislation: Senate Bill 437, Senate Bill 438, Senate Bill 439, Senate Bill 440, Senate Bill 441, Senate Bill 445 and Assembly Bill 237.

By Senator Parys.

Read and referred to committee on Commerce.

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Senate Petition 117

A petition by 76 residents of the State of Wisconsin in support of product liability legislation: Senate Bill 437, Senate Bill 438, Senate Bill 439, Senate Bill 440, Senate Bill 441, Senate Bill 445 and Assembly Bill 237.

By Senator Krueger.

Read and referred to committee on Commerce.

Senate Petition 118

A petition by 20 residents of the State of Wisconsin in support of product liability legislation: Senate Bill 437, Senate Bill 438, Senate Bill 439, Senate Bill 440, Senate Bill 441, Senate Bill 445 and Assembly Bill 237.

By Senator Berger.

Read and referred to committee on Commerce.

Senate Petition 119

A petition by 50 residents of the State of Wisconsin in support of product liability legislation: Senate Bill 437, Senate Bill 438, Senate Bill 439, Senate Bill 440, Senate Bill 441, Senate Bill 445 and Assembly Bill 237.

By Senator Lorge.

Read and referred to committee on Commerce.

Senate Petition 120

A petition by 217 residents of the State of Wisconsin in support of product liability legislation: Senate Bill 437, Senate Bill 438, Senate Bill 439, Senate Bill 440, Senate Bill 441, Senate Bill 445 and Assembly Bill 237.

By Senator Van Sistine.

Read and referred to committee on Commerce.

State of Wisconsin
Claims Board

November 10, 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 October 10, 1977.

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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 October 10, 1977, upon the following claims:

<i>Claimant</i>	<i>Amount of Claim</i>
1. Helen Behrendt -----	\$ 150.00
2. John Choudoir -----	45.76
3. Howard J. Hollenbeck-----	200.00
4. Nummendor Bros., Inc.-----	1,517.31
5. Mrs. Robert Goodman -----	135.00
6. David Goodrick -----	100.00
7. Juneau County -----	38,804.23
8. Robert and Helen Paulson-----	302.30

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

9. John Geib -----	21.75
10. Sandra Miller -----	200.00
11. Cambria State Bank -----	206.00
12. Wisconsin Telephone Co. -----	346.55
13. Anthony Lipari-----	323.68
14. Christina Raine -----	87.36

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THE BOARD FINDS:

1. *Helen Behrendt*

Helen Behrendt, Waupun, Wisconsin, claims \$150.00 damages arising out of an incident occurring on July 8, 1977, when two balloons filled with tan and white paint were thrown against her gray and white house. The thrown balloons caused paint to be sprayed over her screened porch, carpeting, furniture and shrubbery. The claimant alleges the balloons were thrown by members of striking members of the Wisconsin State Employees Union. The claimant's damages are covered by insurance with no deductible amount, according to information furnished to this Board. 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.

2. *John Choudoir*

John Choudoir, Middleton, Wisconsin, claims \$45.76 for damages to his car on June 7, 1977, when a resident in his car released the emergency brake and put his car in gear. Claimant left his car with the driver's door half open, and when the resident at Murphy Hall Central Center released the brake, it caused the open door to be pushed ahead. The car was parked on a downward slope. The Board concludes the claimant contributed to the accident by leaving his car with the door open, 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.

3. *Howard J. Hollenbeck*

Howard J. Hollenbeck, Brooklyn, Wisconsin, claims \$200.00 for attorney fees resulting from successfully defending criminal charges related to an incident occurring on July 6, 1977, at the entrance to Oak Hill Camp at Oregon, Wisconsin, during a strike. While claimant tried to drive through a picket line while reporting for work, one of the picketers allegedly jumped in front of the claimant's car and tried to jump on its hood. The picketer then fell under claimant's car, and brought criminal charges accusing claimant of running him down. The criminal charges have been dropped by the district attorney's office. Claimant was erroneously advised that the state would reimburse him for attorney fees. Ordinarily the state would not pay for attorney fees to defend such criminal charges. However, in view of the circumstances, the Board concludes the claim should be reduced to \$155.00, and the reduced amount paid on equitable principles. The basis for reducing

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the claim is by adjusting the legal services billed at \$60 per hour to \$45.00 per hour.

4. *Nummerdor Bros.*

Nummerdor Bros., Inc., Waupun, Wisconsin, claims \$1517.31 for damage to a new automobile on July 12, 1977, caused by two juveniles who had previously absconded from their state-sponsored foster home. Their absence had been reported to the police ten days prior to the theft. A set of keys to the stolen car had been missing from the claimant's automobile agency a few days prior to the theft. Claimant carried no insurance for the loss. Consistent with a long-standing policy of this Board to deny claims for damages caused by wards of the state while on runaway status, the Board concludes there is an insufficient showing of negligence on the part of the state officers, agents and employes and the claim is not one for which the state is legally liable, nor one which the state should assume and pay on equitable principles. (Senator Kleczka dissents.)

5. *Mrs. Robert Goodman*

Mrs. Robert Goodman, Jim Falls, Wisconsin, claims \$135 damages arising from an incident occurring on April 8, 1977, when their foster child invited several children into claimant's home and broke a family heirloom worth the amount claimed. The Board concludes the claimant should have exercised sufficient control over their foster child to prevent the loss, and 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. *David G. Goodrick*

David G. Goodrick, Green Bay, Wisconsin, claims the \$100.00 deductible amount not paid by his insurance carrier for damages occurring on February 3, 1977, when claimant's car was severely damaged in an accident. Claimant is a state employe who was traveling from the Green Bay Reformatory to the Winnebago Mental Health Institute in Oshkosh, and became involved in a one-car accident due to slippery road conditions. 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. *Juneau County*

Juneau County claims \$38,804.23, which represents its share of the costs required under sec. 26.14, Stats., for suppressing fires at Necedah on August 8, 1976, at New Minor on May 9, 1976, and at Camp Douglas on August 28, 1976. At the hearing, claimant

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withdrew its claims for the costs related to the Necedah and New Minor fires, and requested that the Board only consider whether the state should pay 90% of the \$28,180.81 related to the county's share of costs under sec. 26.14, Stats., for the Camp Douglas fire.

Under sec. 26.14 (3), Stats., a county is required to pay one-half the cost for the suppression of such a fire, not including the costs of the State Department of Natural Resources equipment and manpower. The costs for the Camp Douglas fire were:

Emergency Labor		\$ 4,139.63
Transportation		2,807.92
Fire Departments		435.00
Other Expenses		48,979.07
DNR Personnel	\$14,245.00	
DNR Equipment	<u>15,000.00</u>	
	\$29,245.00	<u>\$56,361.62</u>

One of the main reasons for suppressing the Camp Douglas fire was to reduce the threat to public safety, particularly on I 90-94. Most of the costs were attributable to that objective. A nine car accident on I 90-94 demonstrated a need to control the fire for highway safety purposes. Approximately 477 acres of privately owned land (except for highway right of ways) were burned. A high capacity 12 inch well was drilled to a 240 foot depth and over 99 million gallons of water were pumped on the burning timber and grass marsh until freezing weather set in. The fire began on August 28, 1976, and was not completely controllable for several months thereafter.

Although sec. 26.14(3), Stats., requires the claimant to pay for one-half of \$56,361.62 of the above costs, since most of the costs were in view of the overriding need to protect the interstate highway system, the Board concludes that the claimant should be excused from paying the entire \$28,180.81 and recommends that the state pay 90% of said amount, or \$25,362.73, on equitable principles.

8. *Robert and Helen Paulson*

Robert and Helen Paulson, New London, Wisconsin, claim \$302.30 for medical and related expenses due to an accident on March 8, 1977, at the University of Wisconsin-Oshkosh recreational center. Helen Paulson is an experienced bowler. Prior to the accident she had the opportunity to observe her husband and a friend both slipping while bowling. She was also aware of the

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fact that others had been eating in the area. However, she proceeded to bowl anyway. She then slipped and fell while bowling, breaking the distal radius bone in her left wrist. Claimant alleges the cause of the fall was due to potato chips left by others in the bowling area which were picked up on her shoes, causing her to slip. She claims the state is liable for allowing bowlers to eat in the bowling area. The state's risk management office paid claimants \$216.21 on June 16, 1977, for medical and other bills related to the incident. Since that time claimants have incurred additional expenses of \$302.30, including \$180.00 for domestic help. The Board concludes there is insufficient showing of negligence on the part of state officers, employees and agents to warrant payment of the claim, and concludes the claim is not one for which the state is legally liable. However, on equitable principles, the Board concludes that claimants should be reimbursed for their additional medical bills in the amount of \$122.30, which excludes the \$180.00 for domestic help from the amount claimed.

9. *John Geib*

John Geib, Fond du Lac, Wisconsin, is a social worker who claims \$21.75 for damage to his car on December 13, 1976, when one of his clients inadvertently broke the lock on his glove box. The client had been properly instructed on how to open the glove box, but because of a personal crisis she was facing, the client did not heed the claimant's warning or directions. The Board concludes the claim should be paid on equitable principles.

10. *Sandra Miller*

Sandra Miller, Chippewa Falls, Wisconsin, claims \$200.00 for damages to her pickup truck on June 10, 1977, at Northern Wisconsin Center when an upset resident pounded his fists against the right rear side of the topper. One of the estimates for repair was \$197 and the other was \$200. The Board concludes the claim in the reduced amount of \$197 should be paid on equitable principles.

11. *Cambria State Bank*

The Cambria State Bank claims \$206.00 for reimbursement of funds paid to a ward of the state (age 15) who forged a monthly AFDC allotment check on December 1, 1976. The check belonged to the ward's brother-in-law with whom he was staying at the time. The bank was aware that payment was not being made to the payee. Claimant is the only bank in the village of Cambria (population 631) where the payee lives and is known. Claimant should not have made payment to the 15 year old ward under the

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circumstances. The Board concludes there is no showing of negligence on the part of state officers, employes or agents, 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.

12. *Wisconsin Telephone Company*

Wisconsin Telephone Company claims \$346.55 damages when a state employe digging holes for sign posts with an auger severed claimant's cable on May 18-19, 1976, at the northwest corner of Mayfield and Hy. 175, Town of Richfield, Waukesha, Wisconsin. The Board concludes the claim should be paid on equitable principles.

13. *Anthony Lipari*

Anthony Lipari, Racine, Wisconsin, claims \$323.68 for damages caused by a state electrical crew on July 1, 1977, in claimant's driveway. The crew dug a trench in claimant's driveway on June 30. While driving into the driveway the front wheels of claimant's car hit holes left from the previous night's rain. Claimant's car bounced and hit the exposed roots of a tree close to his driveway, causing the damage to his car. The trench had not been properly backfilled. The Board concludes the claim should be paid on equitable principles.

14. *Christina V. Raine*

Christina V. Raine, Wauwatosa, Wisconsin, claims \$87.36 for damages to her car on June 27, 1977, at the University of Wisconsin-Milwaukee underground parking garage caused by a white solution dripping from the concrete. The area was not chained off. However, a sign recently has been installed which disclaims responsibility for similar damage that may occur in the future. Under the circumstances, the Board concludes this claim should be paid on equitable principles.

THE BOARD CONCLUDES:

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

Helen Behrendt
John Choudoir
Nummerdor Bros., Inc.
Mrs. Robert Goodman
David G. Goodrick

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Cambria State Bank

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

Howard J. Hollenbeck	\$155.00
Robert and Helen Paulson	122.30
John Geib	21.75
Sandra Miller	197.00
Wisconsin Telephone Co.	346.55
Anthony Lipari	323.68
Christina V. Raine	87.36

THE BOARD RECOMMENDS:

The Board recommends that payment of \$25,362.73 be made by the state on behalf of Juneau County to cover 90% of the county's share of the costs of suppressing the fire at Camp Douglas on and after August 28, 1976, for the safety and protection of I 90-94. Said amount should be paid out of the appropriate DNR segregated account.

Dated at Madison, Wisconsin, this 9th day of November, 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

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CHIEF CLERK'S REPORT

The chief clerk records:

Senate Bill 559

Correctly enrolled and presented to the Governor on November 10, 1977.

The chief clerk records:

Senate Bill 227

Correctly enrolled and presented to the Governor on November 11, 1977.

EXECUTIVE COMMUNICATIONS

State of Wisconsin
Office of the Governor
Madison, Wisconsin

November 7, 1977.

To the Honorable, the Senate:

Pursuant to the provisions of the statutes governing, I have nominated and with the advice and consent of the senate do appoint Edward M. Parsons, Jr., of Milwaukee, as a member of the Public Service Commission, to succeed Matthew Holden, resigned, to serve for the term ending March 1, 1981.

Sincerely,
MARTIN J. SCHREIBER
Governor

Read and referred to committee on Commerce.

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State of Wisconsin
Office of the Governor
Madison, Wisconsin

November 9, 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
19 -----	162-----	November 9, 1977
169 -----	163-----	November 9, 1977

Sincerely,
MARTIN J. SCHREIBER
Governor

State of Wisconsin
Office of the Governor
Madison, Wisconsin

November 10, 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
559 -----	169-----	November 10, 1977

Sincerely,
MARTIN J. SCHREIBER
Governor

AMENDMENTS OFFERED

Senate amendment 2 to senate substitute amendment 1 to **Senate Bill 504** by Senator Theno.

Senate amendment 1 to **Senate Joint Resolution 52** by Senator Cullen.

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CHIEF CLERK'S CORRECTION

Suggested by Legislative Reference Bureau

Relating to **Senate Bill 603**:

On page 1, line 4, substitute "appropriated" for "appropriate".