

# Assembly Journal

Eighty-Fourth Regular Session

WEDNESDAY, September 19, 1979.

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

## AMENDMENTS OFFERED

Assembly substitute amendment 1 to **Assembly Joint Resolution 71** offered by committee on Government Operations.

Assembly amendment 3 to **Assembly Bill 108** offered by Joint Committee on Finance.

Assembly amendment 4 to **Assembly Bill 108** offered by Joint Committee on Finance.

Assembly substitute amendment 1 to **Assembly Bill 110** offered by Joint Committee on Finance.

Assembly substitute amendment 1 to **Assembly Bill 174** offered by committee on Local Affairs.

Assembly amendment 1 to assembly substitute amendment 1 to **Assembly Bill 178** offered by committee on Local Affairs.

Assembly amendment 2 to assembly substitute amendment 1 to **Assembly Bill 209** offered by Joint Committee on Finance.

Assembly amendment 3 to assembly substitute amendment 1 to **Assembly Bill 209** offered by Joint Committee on Finance.

Assembly amendment 4 to assembly substitute amendment 1 to **Assembly Bill 209** offered by Joint Committee on Finance.

Assembly amendment 1 to **Assembly Bill 321** offered by committee on Government Operations.

Assembly amendment 2 to **Assembly Bill 321** offered by committee on Government Operations.

Assembly substitute amendment 1 to **Assembly Bill 322** offered by committee on Elections.

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Assembly amendment 1 to **Assembly Bill 462** offered by Joint Committee on Finance.

Assembly substitute amendment 1 to **Assembly Bill 502** offered by Representatives Conradt, Donoghue, Wood, Prosser, Hopkins, Larson and Andrea.

Assembly substitute amendment 1 to **Assembly Bill 552** offered by Joint Committee on Finance.

Assembly substitute amendment 1 to **Assembly Bill 554** offered by Representative Donoghue.

Assembly amendment 1 to assembly substitute amendment 1 to **Assembly Bill 656** offered by Representative Leopold.

Assembly substitute amendment 1 to **Assembly Bill 672** offered by committee on Judiciary.

Assembly substitute amendment 1 to **Assembly Bill 699** offered by Representative Shoemaker.

Assembly amendment 1 to **Assembly Bill 717** offered by committee on Local Affairs.

Assembly substitute amendment 1 to **Assembly Bill 731** offered by Representative Barczak.

Assembly amendment 1 to **Assembly Bill 736** offered by committee on Excise and Fees.

Assembly amendment 2 to **Assembly Bill 752** offered by Representative Schneider.

Assembly amendment 1 to **Assembly Bill 756** offered by committee on Judiciary.

Assembly amendment 1 to **Senate Bill 156** offered by Representative Tuczynski.

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INTRODUCTION AND REFERENCE OF PROPOSALS

Read first time and referred:

**Assembly Resolution 17**

Granting the use of the assembly chambers on April 26, 1980, to the 1980 Model Legislature of the Distributive Education Clubs of America.

By Representative D. Travis.  
To committee on Rules.

**Assembly Joint Resolution 80**

Relating to directing the legislative council to study the needs of artists, art institutions and audiences of the arts in this state.

By Representatives Becker, Otte, Leopold, Byers, Duren, Lorman, Clarenbach and Ulichny, co-sponsored by Senators Moody and Johnston.

To committee on Government Operations.

**Assembly Joint Resolution 81**

Directing the legislative council to study the laws relating to pets, pet licensing and humane societies.

By Representative Otte.

To committee on State Affairs.

**Assembly Bill 871**

Relating to the income tax treatment of product liability losses.

By Representatives Thompson, Snyder, McClain, Shabaz, Omernick, Fischer, Wagner, Hopkins, Matty, Porter, Shoemaker, Lingren, Ladwig, Andrea, Stitt, Merkt, Laatsch, Lorman, Harer, Klicka, Donoghue, Metz, Kincaid, Ward, Hauke and Luckhardt, co-sponsored by Senators Murphy, Opitz, Krueger, Cullen and Johnston.

To committee on Revenue.

**Assembly Bill 872**

Relating to the rights of patients of health care providers, granting rule-making authority, providing a penalty and making an appropriation.

By Representative Clarenbach.

To committee on Health and Social Services.

**Assembly Bill 873**

Relating to competency to proceed in criminal cases.

By Legislative Council.

To committee on Judiciary.

**Assembly Bill 874**

Relating to state funding to counties that establish an office of the county executive and making an appropriation.

By Representative Andrea, co-sponsored by Senator Harnisch.

To committee on Local Affairs.

**Assembly Bill 875**

Relating to the definition of the word "person" in the statutes (suggested as remedial legislation by the legislative reference bureau).

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By committee on Remedial Legislation.  
To committee on Government Operations.

**Assembly Bill 876**

Relating to remedial legislation affecting the statute concerning school corporations (suggested as remedial legislation by the educational approval board).

By committee on Remedial Legislation.  
To committee on Education.

**Assembly Bill 877**

Relating to clarifying statutory language regarding the duties of the depository selection board (suggested as remedial legislation by the state treasurer).

By committee on Remedial Legislation.  
To committee on Revenue.

**Assembly Bill 878**

Relating to the financial interest of members of the public service commission, warning signs for electric lines and assessment of costs of commission investigations of sewerage systems. (suggested as remedial legislation by the public service commission.)

By committee on Remedial Legislation.  
To committee on Commerce and Consumer Affairs.

**Assembly Bill 879**

Relating to controlling agricultural pests and regulating pesticides (suggested as remedial legislation by the department of agriculture, trade and consumer protection).

By committee on Remedial Legislation.  
To committee on Agriculture.

**Assembly Bill 880**

Relating to a membership restriction in the national conference of commissioners on uniform state laws and adding 2 legislators to the Wisconsin commission on uniform state laws.

By Legislative Council.  
To committee on Government Operations.

**Assembly Bill 881**

Relating to transfers of juveniles from mental health facilities to juvenile correctional facilities.

By Legislative Council.  
To committee on Criminal Justice and Public Safety.

**Assembly Bill 882**

Relating to state reimbursement for county claims for expenses in connection with residents of juvenile correctional facilities.

By Legislative Council.

To committee on Criminal Justice and Public Safety.

**Assembly Bill 883**

Relating to duration of dispositional orders for children adjudged delinquent whose legal custody has been transferred to the department of health and social services.

By Legislative Council.

To committee on Criminal Justice and Public Safety.

**Assembly Bill 884**

Relating to election of the common council in 1st class cities.

By Representative Broydrick.

To committee on Local Affairs.

**Assembly Bill 885**

Relating to the subdivision of land and the preparation and recording of plats and certified survey maps.

By Representative Barry, co-sponsored by Senator Thompson.

To committee on Local Affairs.

**Assembly Bill 886**

Relating to yielding the right-of-way when a vehicle enters an alley or driveway and providing a penalty.

By Representatives McClain, Vanderperren, Smith, Matty and Soucie, co-sponsored by Senators Chilsen and Moody.

To committee on Highways.

**Assembly Bill 887**

Relating to raising limitations on awards for loss of society and companionship.

By committee on Judiciary.

To committee on Judiciary.

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COMMITTEE REPORTS

The committee on Elections reports and recommends:

**Assembly Bill 322**

Relating to partisan primary elections, special elections, election officials, ballots, nominations, canvassing, recounts, vacancies, referenda, voting procedure, residency, notices and administration of elections and making an appropriation.

JOURNAL OF THE ASSEMBLY [September 19, 1979]

Adoption of assembly substitute amendment 1:

Ayes: (11) Noes: (0)

Passage: Ayes: (11) Noes: (0)

To Joint Committee on Finance.

**Assembly Bill 846**

Relating to a requirement for presidential electors to vote for the presidential and vice presidential candidates appearing on the ballot.

Passage: Ayes: (11) Noes: (0)

To committee on Rules.

CALVIN POTTER

Chairperson

The committee on Excise and Fees reports and recommends:

**Assembly Bill 376**

Relating to closing hours for premises for which an intoxicating liquor license is issued.

Passage: Ayes: (8) Noes: (1)

To committee on Rules.

**Assembly Bill 401**

Relating to retail liquor licenses for restaurants of historical significance.

Adoption of assembly amendment 1:

Ayes: (8) Noes: (1)

Passage: Ayes: (7) Noes: (2)

To committee on Rules.

EUGENE DORFF

Chairperson

The committee on Financial Institutions reports and recommends:

**Assembly Bill 662**

Relating to certain revisions of the savings and loan statutes.

Passage: Ayes: (13) Noes: (0)

To committee on Rules.

**Assembly Bill 820**

Relating to required disability insurance coverage for at least 2 policyholder visits per year to a physician's office.

Passage: Ayes: (9) Noes: (4)

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To Joint Committee on Finance.

**Senate Bill 23**

Relating to revision of the insurance security fund law and granting rule-making authority.

Concurrence: Ayes: (13) Noes: (0)  
To Joint Committee on Finance.

**Senate Bill 146**

Relating to miscellaneous corrections and revisions in the insurance code and related statutes.

Concurrence: Ayes: (13) Noes: (0)  
To committee on Rules.

THOMAS HAUKE  
Chairperson

The committee on Highways reports and recommends:

**Assembly Bill 518**

Relating to providing notice of 24-hour parking limitations.

Passage: Ayes: (10) Noes: (1)  
To committee on Rules.

CLETUS VANDERPERREN  
Chairperson

The committee on Judiciary reports and recommends:

**Assembly Bill 654**

Relating to repealing the prohibition of payment of attorney fees based on health care liability awards for future medical expenses.

Passage: Ayes: (6) Noes: (2)  
To committee on Rules.

**Assembly Bill 672**

Relating to recording in municipal court.

Adoption of assembly substitute amendment 1:  
Ayes: (9) Noes: (0)

Passage: Ayes: (9) Noes: (0)  
To committee on Rules.

**Assembly Bill 756**

Relating to investment of certain funds by a clerk of court.

Adoption of assembly amendment 1:

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Ayes: (9) Noes: (0)

Passage: Ayes: (9) Noes: (0)

To committee on Rules.

**Assembly Bill 783**

Relating to fraud concerning the use of campgrounds and providing a penalty.

Passage: Ayes: (9) Noes: (0)

To committee on Rules.

**Senate Bill 91**

Relating to temporary service by retired family court commissioners.

Concurrence: Ayes: (9) Noes: (0)

To committee on Rules.

**Senate Bill 169**

Relating to procedure in small claims type actions.

Concurrence: Ayes: (5) Noes: (4)

To committee on Rules.

JAMES RUTKOWSKI

Chairperson

The committee on Revenue reports and recommends:

**Assembly Bill 407**

Relating to the use of certified mail for certain tax notices.

Passage: Ayes: (8) Noes: (0)

To committee on Rules.

**Assembly Bill 414**

Relating to the use of certified mail for certain tax notices.

Passage: Ayes: (8) Noes: (0)

To Joint Committee on Finance.

**Assembly Bill 548**

Relating to the due dates for sales and use tax returns and payments.

Passage: Ayes: (8) Noes: (0)

To Joint Committee on Finance.

**Assembly Bill 757**

Relating to optional income tax rates.



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Passage: Ayes: (7) Noes: (1)  
To Joint Committee on Finance.

**Senate Bill 85**

Relating to membership of Milwaukee's board of assessors, certification of the deputy tax commissioner and the dates for completion of the Milwaukee assessment rolls and filing assessment objections.

Concurrence: Ayes: (8) Noes: (0)  
To committee on Rules.

**Assembly Bill 553**

Relating to creating a generation-skipping transfer tax.

Passage: Ayes: (9) Noes: (0)  
To Joint Committee on Finance.

**Assembly Bill 650**

Relating to the deposit of contested tax amounts with the department of revenue.

Passage: Ayes: (9) Noes: (0)  
To Joint Committee on Finance.

MARLIN SCHNEIDER  
Chairperson

The committee on State-Federal Relations reports and recommends:

**Assembly Joint Resolution 46**

Ratifying an amendment to the U.S. constitution, relating to treating the District of Columbia as a state for the purpose of congressional representation.

Adoption: Ayes: (4) Noes: (2)  
To committee on Rules.

LOUISE TESMER  
Chairperson

The committee on Transportation reports and recommends:

**Assembly Bill 198**

Relating to minimum motor vehicle liability insurance requirements for school busses.

Adoption of assembly amendment 1:  
Ayes: (8) Noes: (1)

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Adoption of assembly amendment 2:

Ayes: (9) Noes: (0)

Passage: Ayes: (7) Noes: (2)

To committee on Rules.

**Assembly Bill 199**

Relating to the use of safety belts by school bus operators, granting rule-making authority and providing a penalty.

Passage: Ayes: (6) Noes: (3)

To committee on Rules.

**Assembly Bill 452**

Relating to the transportation of private school pupils.

Adoption of assembly amendment 2:

Ayes: (9) Noes: (0)

Passage: Ayes: (9) Noes: (0)

To Joint Committee on Finance.

KEVIN SOUCIE

Chairperson

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COMMUNICATIONS

State of Wisconsin  
Department of State  
Madison

To Whom It May Concern:

Dear Sir: Acts, joint resolutions and resolutions, deposited in this office, have been numbered and published as follows:

Bill, Jt. Res. or Res.	Chapter No.	Publication date
Assembly Bill 165 -----	37 -----	September 8, 1979
Assembly Bill 40 -----	38 -----	September 14, 1979
Assembly Bill 194 -----	39 -----	September 14, 1979
Assembly Bill 284 -----	40 -----	September 14, 1979
Assembly Bill 7 -----	41 -----	September 14, 1979
Assembly Bill 54 -----	42 -----	September 14, 1979

VEL PHILLIPS

Secretary of State

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OPINION OF THE ATTORNEY GENERAL

OAG 82-79

September 10, 1979

Mr. Marcel Dandeneau  
Chief Clerk  
Wisconsin Assembly  
305 West, State Capitol  
Madison, Wisconsin 53702

Dear Mr. Dandeneau:

The Assembly Committee on Organization has requested my opinion on the constitutionality of 1977 AB 987, an act to create sec. 347.483 of the statutes, which would prohibit the use and sale of radar detectors.

The proposed legislation provides in part:

Section 1. 347.483 of the statutes is created to read:  
347.483 Radar detecting devices.

....

(2) Use prohibited. Except as provided in sub. (4), no person may operate on a highway a motor vehicle equipped with a radar detecting device. The presence of any radar detecting device in or upon a motor vehicle upon a highway constitutes prima facie evidence of a violation of this section.

(3) Sale prohibited. Except as provided in sub. (4), no person may sell or offer for sale in this state any radar detecting device.

Subsection (4) exempts the receipt of licensed frequencies, the use of detectors by law enforcers, and the transportation of detectors for lawful use or sale if properly stored.

First you ask whether the statutory presumption that "presence of any radar detecting device in or upon a motor vehicle upon a highway constitutes prima facie evidence of a violation" is unconstitutional.

My answer is "no."

Section 903.01, Stats., governing presumptions in general, states that:

Except as provided by statute, a presumption recognized at common law or created by statute, including statutory provisions that certain basic facts are prima facie evidence of

other facts, imposes on the party relying on the presumption the burden of proving the basic facts, but once the basic facts are found to exist the presumption imposes on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence.

Although the cases dealing with the constitutionality of various statutory presumptions are conflicting, the United States Supreme Court consistently has held that due process in criminal cases requires a certain rational connection between the fact proved and the fact presumed therefrom. At least, the presumed fact must flow "more likely than not" from the proved fact. *Barnes v. United States*, 412 U.S. 837, 843 (1973); *Leary v. United States*, 395 U.S. 6, 44-45 (1969); *Tot v. United States*, 319 U.S. 463, 467 (1943). The Wisconsin Supreme Court has labeled forfeiture provisions "penal." *State ex rel. Lynch v. Conta*, 71 Wis. 2d 662, 670, 239 N.W.2d 313 (1976). And, while the court has held that forfeiture actions are essentially civil in nature, due process requires that the state carry at least a burden of persuasion by the "clear and convincing" standard. *City of Neenah v. Alsteen*, 30 Wis. 2d 596, 142 N.W.2d 232 (1966); sec. 345.45, Stats. (1977).

Thus, the Legislature is not free to allocate the burden of persuasion to the defendant as it could in a purely civil action. *Lavine v. Milne*, 424 U.S. 577, 585 (1976). Where the state does bear the burden of demonstrating guilt, statutory presumptions aimed at assisting in that burden must satisfy certain standards of reliability. *Id.* 424 U.S. at 585 n. 10. In my opinion, the "more likely than not" test for presumptions is consistent with the state's burden of proving guilt of the offense by clear, satisfactory and convincing evidence.

Two presumptions are set up by sec. 347.483, Stats.: first, that the existence of an automobile upon the highway is proof of its operation on the highway; second, that the presence of a radar detector in or on the vehicle is prima facie evidence that the vehicle was equipped with a radar detector.

Under the "more likely than not" test, the first presumption is not very troublesome. The existence of a vehicle on a highway is consistent with the conclusion that the vehicle was operated on the highway.

It is also my opinion that the presumption that the presence of a radar detector in or on the vehicle is prima facie evidence that the vehicle is equipped with the device is constitutionally sound. The

presumption has the effect of requiring a defendant to produce evidence showing that it is more probable than not that defendant's vehicle was not equipped with a detector, after the state produces evidence showing that a detector was present in the vehicle. The presumption is not rendered unconstitutional because in a particular case the presence of a radar detector in or upon a vehicle does not establish "more likely than not" that a vehicle is equipped with such a device. The standard established in *Leary* and *Tot* is one of probability based on all situations where a radar detector is present in or upon a motor vehicle. Thus, in judging whether the presumption in the proposed statute is constitutional, one must ask whether the presumed fact--that the vehicle is equipped with a radar detector--flows "more likely than not" from the proven fact of presence of a radar detector. I find no difficulty applying this test in relation to the proposed statute. The presumed fact, that the vehicle is equipped with a radar detecting device, flows more likely than not from the proved fact: the presence of the device in the vehicle.

The Virginia Supreme Court, in *Crenshaw v. Commonwealth*, 219 Va. 44, 245 S.E.2d 243 (1978), was confronted with language in a Virginia statute almost identical to the language in the proposed statute that creates the presumption that a vehicle is equipped with a radar device upon proof of the presence of such a device. In *Crenshaw*, the court held the following statutory presumption invalid as a denial of due process:

"The presence of any such prohibited device or mechanism in or upon a motor vehicle upon the highways of this State shall constitute prima facie evidence of the violation of this section. The Commonwealth need not prove that the device in question was in an operative condition or being operated."

245 S.E.2d at 245 n. 1. The court's holding was based on its belief that the effect of the second sentence, when read with the paragraph as a whole, was to exclude from the trier of fact's consideration any evidence concerning "operative condition," thereby rendering the presumption conclusive. Had the second sentence of the presumption been excised, the court in *Crenshaw* clearly would have upheld its validity. 245 S.E.2d at 246.

The presumption in the proposed statute is rebuttable. Where the operator of a motor vehicle believes the presumption inappropriate, he or she can show that the vehicle was not "equipped" because the radar detector was inaccessible to the driver, suffered from a mechanical defect which rendered it inoperable, etc. In cases where the vehicle is not "equipped" with a detector, the vehicle's occupant is

obviously in the best position to produce evidence to that effect, and the presumption operates to compel such evidence. I conclude that the presumption in question meets due process requirements and is constitutionally sound.

Second, you ask whether the law would violate the interstate commerce clause alone or coupled with the federal supremacy clause of the United States Constitution. The answer is no.

I find no federal law enacted under the commerce clause relative to radar detectors. Thus there is no problem of the state's law conflicting with federal law under both the commerce clause, art. 1, sec. 8, para. 3 and the supremacy clause, U.S. Const. art. VI, para 2.

The commerce clause, even in the absence of federal legislation in this area, consistently has been construed to prevent the states from erecting barriers to the free flow of interstate commerce. *Great Atlantic and Pac. Tea Co., Inc. v. Cottrell*, 424 U.S. 366, 370-71 (1976); *Cooley v. Board of Wardens*, 53 U.S. 299 (12 How. 299) (1852).<sup>1</sup> Nonetheless, the states are empowered to enact legislation serving legitimate state interests if it does not cause an impermissible burden on interstate commerce. *Gibbons v. Ogden*, 22 U.S. 1 (9 Wheat. 1) (1824). The considerations relevant to reaching a balance between the overlapping federal and state interests were summarized most recently by the United States Supreme Court in *Raymond Motor Transportation, Inc. v. Rice*, 434 U.S. 429 (1978). Citing earlier cases with approval, the Court stated that, "in no field has the deference to state regulation been greater than that of highway safety regulation," and a statute will be overturned only where "the total effect of the law as a safety measure ... is so slight or problematical as not to outweigh the national interest in keeping interstate commerce free from interferences which seriously impede it." 434 U.S. at 443. My conclusion, based on *Raymond* and the cases cited therein, is that the legislation in its present form would not violate the commerce clause. The state has a legitimate interest in safety. If there is evidence that the law contributes to highway safety, it would be entitled to a strong presumption of validity. The law would have to interfere seriously with the free flow of commerce before it would be considered an impermissible burden. *Raymond*, 434 U.S. at 444-45. That the law would require those interstate travelers who use radar detectors to render their vehicles "unequipped" appears not to present a burden of any constitutional magnitude. Furthermore, the Legislature has minimized the burden by removing from the scope of the law the transportation of detectors for lawful use or sale if the device is stored in an enclosed storage

compartment of the vehicle. I must add one proviso, however. Legal conclusions in this area, which depend on the balance between the legitimacy of state legislation and the burden on commerce, are drawn on empirical information. Since I lack this information, my answer is necessarily somewhat speculative.

Your third question is whether federal law, specifically the Federal Communications Act of 1934, 47 U.S.C.A. sec. 151, *et seq.*, has preempted all regulation of radio transmissions. The answer is no.

I find nothing in this Act evincing a congressional intent to prevent the states from regulating the receipt of police radar. The scope of the Act is limited to interstate communication by radio. 47 U.S.C.A. sec. 152(a). Intrastate regulation of radio is explicitly removed from the Federal Communications Commission's jurisdiction. 47 U.S.C.A. sec. 152(b)(1). I see no conflict between the proposed law and the purposes of the federal act. 47 U.S.C.A. sec. 151. Highway safety measures are enacted under the historic police powers of the states, which are not to be superseded by federal act unless that was the clear and manifest purpose of Congress. *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977); *Rice v. Santa Fe Elevator Corporation*, 331 U.S. 218, 230 (1947).

Fourth, you ask whether the law would interfere with the lawful operation of radio receivers receiving lawfully licensed frequencies, such that it would be unconstitutionally vague or overbroad. I have difficulty understanding the question, particularly since subsec. (4)(a) of the proposed statute specifically provides that the law does not apply to "any receiver of radio waves of any frequency licensed by any federal agency or agency of this state."

I imagine that your concern is whether the definition of "radar detecting device" includes only those devices intended to be prohibited by the legislation. I am unable to respond to this question as an answer requires technical information not available to me.

Sincerely yours,  
**BRONSON C. La FOLLETTE**  
Attorney General

Caption:

Proposed legislation to create sec. 347.483 of the statutes, which would prohibit the use and sale of radar detectors meets due process requirements and is constitutionally sound. Moreover, such a law would not violate the commerce or supremacy clauses of the United States Constitution.

September 18, 1979

Donald Schneider  
Senate Chief Clerk  
213 Southeast, State Capitol  
Madison, Wisconsin 53702

Dear Mr. Schneider:

Enclosed is the report of the State Claims Board covering the claims heard on August 31, 1979.

The amounts recommended for payment under \$1,000 on claims included in this report have, under the provisions of s. 16.007, stats., been paid directly by the Board.

The Board is preparing the bill(s) on the recommended award(s) over \$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

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LEGISLATIVE REFERENCE BUREAU CORRECTIONS

**Assembly Bill 742**

1. On page 7, line 28, delete "(10) (a) 2,".

**Assembly Bill 751**

1. On page 4, line 29, substitute "contact" for "contract".