

JOURNAL OF THE SENATE

Eighty-Fourth Regular Session

WEDNESDAY, December 19, 1979.

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

INTRODUCTION OF BILLS

Read first time and referred:

Senate Bill 479

Relating to termination of parental rights.

By Senators Adelman, Harnisch, Moody, Braun, Chilsen, Berger, Bear and Thompsen; cosponsored by Representative Leopold.

To committee on Judiciary and Consumer Affairs.

Senate Bill 480

Relating to exempting the first \$10,000 of military retirement from the income tax.

By Senator Van Sistine.

To Joint Survey committee on Tax Exemptions.

Senate Bill 481

Relating to statements of full valuation on property tax bills.

By Senators Kreul and Roshell.

To committee on Education and Revenue.

COMMITTEE REPORTS

The committee on Human Services reports and recommends:

Senate Bill 338

Relating to creating an office of the commissioner of volunteerism, granting rule-making authority and making an appropriation.

Passage:

Ayes, 3 -- Senators Thompson, Opitz and Radosevich;

Noes, 1 -- Senator Strohl.

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Senate Bill 181

Relating to the determination of brain death.

Adoption of senate amendment 1:

Ayes, 5 -- Senators Thompson, Radosevich, Cullen, Opitz and Strohl;

Noes, 0 -- None.

Indefinite postponement:

Ayes, 4 -- Senators Strohl, Cullen, Opitz and Radosevich;

Noes, 1 -- Senator Thompson.

CARL W. THOMPSON

Chair

REPORT OF JOINT SURVEY COMMITTEE ON

TAX EXEMPTIONS

Appendix to **Senate Bill 368**

Public Policy Involved

This bill is desirable public policy.

Referred to committee on Education and Revenue.

Appendix to **Senate Bill 369**

Public Policy Involved

This bill is desirable public policy.

Referred to committee on Education and Revenue.

Appendix to **Senate Bill 474**

Public Policy Involved

Sections 6 through 16 of this bill, which would exempt from state inheritance and gift taxation all transfers made to a person's spouse are good public policy. We also recommend that the standing committee which considers this bill examine whether the bill would permit income splitting for tax purposes.

Referred to committee on Judiciary and Consumer Affairs.

MICHELE G. RADOSEVICH

Co-chair

DAVID E. CLARENBACH

Co-chair

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PETITIONS AND COMMUNICATIONS

State of Wisconsin
Claims Board

December 6, 1979.

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 November 19, 1979.

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 November 19, 1979, upon the following claims:

<i>Claimant</i>	<i>Amount</i>
1. Ray Omernick	\$64,961.00
2. Ray Omernick	20,239.00
3. Ray Omernick	13,890.00
4. Ray Omernick	6,311.72
5. Ray Omernick	478.25

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THE BOARD FINDS:

These claims stem from a lengthy controversy between the claimant on the one hand and numerous representatives of the Department of Natural Resources on the other, concerning the claimant's diversion of water from streams bordering or crossing his land. The controversy has given rise to legal actions in various courts and at times, to the seizure of some of the claimant's irrigation equipment used in allegedly illegal water diversion. The claimant believes that he is entitled to divert water from the streams to irrigate his potato and wheat fields, and the Department contends that he has failed to file proper applications and obtain permits before resorting to such diversion.

The first three claims are for crop damage attributed to one or another of three causes. First, the claimant's better irrigation equipment had been seized and held as evidence for criminal prosecutions for water diversion, forcing him to use older, less efficient equipment which reduced his harvest. Second, the Department did not give him a hearing on an application for a water diversion permit; and he did not divert water one year, causing a loss of crops. The Department contends that he never submitted a completed application, despite repeated advice to do so, and did not grant the Department request for permission to inspect the premises. Third, in the 1976 drought the claimant sought an emergency permit for water diversion, which was denied, again reducing his harvest. The Department contends that his application, if granted, would have allowed diversion of more than 80% of the stream flow at that time and that the permit could not have been granted under the rules then in effect, because it would have had undue adverse environmental effects.

The fourth claim is for fees for attorneys retained by the claimant to defend him in criminal actions for illegal water diversion. The claimant has not been acquitted of any of these charges. Instead, they were dismissed, the evidence shows that the dismissals were based upon an agreement that the claimant was not going to continue diverting water without a proper permit.

The fifth claim is for damage to one of the claimant's pumps, alleged to have occurred while the pump was being held by the Department which had seized it pursuant to a search warrant. The evidence as to when or how the pump was damaged is inconclusive.

The Board concludes that none of these five claims are ones for which the State is legally liable, nor one which the State should assume and pay on equitable principles. (Member Main not participating).

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Dated at Madison, Wisconsin, this 6th day of December, 1979.

GERALD D. KLECZKA
Senate Finance Committee

VIRGIL D. ROBERTS
Assembly Finance Committee

LAURIE ANN McCALLUM
Representative of Governor

E. WESTON WOOD
Representative of Attorney
General

BEFORE THE CLAIMS BOARD OF WISCONSIN

The Claims Board conducted hearings at the State Capitol Building, Madison, Wisconsin, on November 19, upon the following claims:

<i>Claimant</i>	<i>Amount</i>
1. Lynn Hoeft	\$1,786.00
2. Harold O. Schroeder	125.00

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

3. Glen Harold	1,339.00
4. Delbert J. Johnson	451.17
5. Elwin Thompson	2,400.00
6. Lois Sykora	156.00
7. LaVerne D. Fodor	66.50
8. Milwaukee Mutual Insurance Co.	94.69
9. Michael Fedel	6,533.70
10. James Boshers	43.00
11. Jerome Fairbo Farms, Inc.	1,706.25
12. Susan Bestland	546.74
13. Robert Ostrander	140.40

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THE BOARD FINDS:

1. Lynn Hoeft, of Oshkosh, was engaged in picketing with about 20 other state employes, during an illegal strike against the state on July 10, 1977, at Winnebago Mental Health Institute. A member of the National Guard, from the Department of Veterans Affairs, while in the performance of his duty, proceeded to drive a jeep slowly through the picketers, allegedly striking claimant on the left side. The claimant was in violation of s.21.17, Stats., which prohibits interfering with members of the National Guard while in the performance of duty. 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. Harold O. Schroeder, of Cambridge, claims \$125.00 for the loss of 25 racing/homing pigeons which were killed by a raccoon that gained entry into a building where the pigeons were kept on June 23, 1979. Even though legal title to all wild animals in Wisconsin is vested in the state pursuant to s.29.02(1), Stats., mere ownership does not create legal liability for damages done by wild animals. There is no showing of negligence on the part of the state, its officers, agents or employes, 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.

3. Glen Harold, of Maiden Rock, claims \$1,339 for deer damage to his apple orchard on March 29, 1979. Wildlife management personnel from the Department of Natural Resources investigated the damage on April 4, 1979 and determined the damage occurred prior to 10 days before March 29, 1979. Although claimant failed to furnish timely notice pursuant to s.29.595, Stats., the Board concludes the claimant should receive \$500 in full settlement of his claim, based upon equitable principles.

4. Delbert J. Johnson, of Kasson, Minnesota, claims \$451.17 because his homeowner's insurance does not cover damages to the window frames of his cabin located on Shell Lake in Wisconsin, apparently caused by a pileated woodpecker during the weeks of May 14-29, 1979. Even though legal title to all wild animals in Wisconsin is vested in the state pursuant to s.29.02(1), Stats., mere ownership does not create liability for damages done by wild animals. There is no showing of negligence on the part of the state, its officers, agents or employes, 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.

5. Elwin Thompson, of Eau Claire, claims \$2,400.00 for deer damage to his nursery tree stock. Claimant's damage occurred

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during February and March, 1979. Claimant first notified the Department of Natural Resources of such damage by telephone call on April 30, 1979, and investigation was made the same day which indicated the deer damage occurred during the winter months. In this case, excessive time had lapsed between the time claimant alleges damage occurred and the time he gave notification of such damages. Also under s.29.595, Stats., claimant failed to provide timely notice of continuing damage. 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. Lois Sykora, of Chippewa Falls, claims \$156.00 for damage to the vinyl roof of her car on September 6, 1979, while it was parked at the Northern Wisconsin Center where she is employed. While the claimant was working, witnesses observed a resident of the Center tearing the vinyl roof off claimant's car. The Board concludes the claim should be paid on equitable principles, by check issued jointly to Lois Sykora and United States Vinyl of Eau Claire.

7. LaVerne D. Fodor, of Racine, claims \$66.50 for the cost of changing the locks and ignition of her 1974 Mustang. Claimant, an employe of Southern Wisconsin Center for over 12 years, discovered her billfold and car keys missing on April 24, 1979. The Board concludes there is insufficient evidence on the part of the state, its officers, agents or employes to find casual negligence, and that this claim is not one for which the state is legally liable nor one which the state should assume and pay on equitable principles.

8. Milwaukee Mutual Insurance Company claims \$94.69 for reimbursement of a payment made to one of its insureds, Robert Galella as a result of escapees from Lincoln Hills breaking into insured's garage and damaging ignition wires of his car in May, 1979. It is a long-standing policy of the Board to deny claims for damages caused by wards of the state on escape status in the absence of any showing of negligence on the part of the state, its officers, agents or employes. In addition, it is a long-standing policy of the Board to deny payment of subrogation claims made by insurance carriers. For the above reasons, 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. Michael Fedel, of Port Washington, claims \$6,533.70 for injury to his knee on November 15, 1978. Claimant was engaged in a game of racquetball at the gym at UW-Oshkosh, when a basketball from an adjacent court rolled into his area. Claimant slipped on the ball, twisted his right knee and sustained injury in the nature of stretched ligaments and torn cartilage, for which he underwent

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surgery. Claimant's insurance carrier has paid \$3,347.05, leaving a balance of \$186.65 unpaid medical bills and \$3,000.00 claimed for general damages. Students are aware that if one or two areas of this gym are used for racquetball, the opposite end of the gym can be used for a half-court basketball game, and they assume the risk that they may step on a basketball or racquetball. The Board concludes there has been no showing of negligence on the part of the state, its officers, agents or employees and recommends payment of \$186.65 for the uninsured loss of medical bills on equitable principles.

10. James Boshers of Madison, claims \$43.00 for replacement of damaged eyeglass lenses on March 23, 1979. While exiting a UW-Hospital Transportation vehicle, the wind blew the left rear door of the vehicle against claimant's face, knocking his glasses to the concrete, causing scratches to both lenses, and a chip to the right lens. There is no showing that negligence by the state caused the damages for which reimbursement is claimed, 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.

11. Jerome Fairbo Farms, Inc., of Barron, claims \$1,706.25 as the result of a overpayment in filing articles of incorporation to transact business in Wisconsin, pursuant to s.180.87, Stats. Claimant, a Minnesota corporation, filed an Application for Certificate of Authority of Foreign Corporation with the Secretary of State which contained incorrect financial information. As a result, claimant paid \$1,920.00 to the state, when the correct fee should have been \$213.75. Pursuant to s.16.007(6)(b)3, the Board recommends, as an advisory opinion, that the representative of the Department of Administration order payment to the claimant in the amount of \$1,706.25 without approval of the board and without submission of the claim in the form of a bill to the legislature.

12. Susan Bestland, of Brookfield, claims \$546.74 which was the cash estate of her father, Guy Ward, who died on April 10, 1978, after residing at the Wisconsin Veterans Home since August 28, 1973. Claimant's father left no will. Mr. Ward, on being admitted to membership in the Wisconsin Veteran's Home, signed an application indicating agreement with the provision that in the event of death without any legal dependents, his real property and his personal property descended to the State of Wisconsin as sole heir, for the benefit of the Home. Pursuant to ss.45.37(11) and 45.37(16)(f), 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.

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13. Robert Ostrander, of Seneca, claims \$140.40 for the cost of refinishing and repainting his vehicle. In June, 1979, between Madison and Dousman, Wisconsin a Department of Transportation crew was painting a yellow centerline on Hwy. 18, and proper warning signs were in place at the time claimant passed the paint trucks and allegedly received an overspray of yellow paint on the left side of his vehicle. There has been no showing of negligence on the part of the state, its officers, employes or agents, 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.

THE BOARD CONCLUDES:

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

Lynn Hoeft
Harold Schroeder
Delbert Johnson
Elwin Thompson
LaVerne D. Fodor
Milwaukee Mutual Insurance Company
James Boshers
Susan Bestland
Robert Ostrander

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

Glen Harold	500.00
Lois Sykora	156.00
Michael Fedel	186.65

Dated at Madison, Wisconsin this 6th day of December, 1979.

GERALD D. KLECZKA
Senate Finance Committee

VIRGIL D. ROBERTS
Assembly Finance Committee

LAURIE ANN McCALLUM
Representative of Governor

EDWARD D. MAIN
Representative of Secretary of
Administration

E. WESTON WOOD
Representative of Attorney
General

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EXECUTIVE COMMUNICATIONS

State of Wisconsin
Office of the Governor
Madison, Wisconsin

December 13, 1979.

To the Honorable, the Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint Robert O. Pollock of Stevens Point as a member of the Health Facilities Authority, to succeed himself pursuant to the statutes governing, to serve a seven year term to expire on June 30, 1986.

Sincerely,
LEE SHERMAN DREYFUS
Governor

Read and referred to committee on Human Services.

State of Wisconsin
Office of the Governor
Madison, Wisconsin

December 13, 1979.

To the Honorable, the Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint Marvin P. Kruesel of Milwaukee as a member of the Architects, Professional Engineers, Designers and Land Surveyors Examining Board, representing the Designers Section, to succeed Thomas Nehlson of Milwaukee, pursuant to the statutes governing, to serve a three year term to expire on July 1, 1982.

Sincerely,
LEE SHERMAN DREYFUS
Governor

Read and referred to committee on Governmental and Veterans' Affairs.

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

December 13, 1979.

To the Honorable, the Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint Ray E. Sherman of Sturgeon Bay as a member of the Architects, Professional Engineers, Designers and Land Surveyors Examining Board, representing the Designers, to succeed Charles Rohde of Plymouth, pursuant to the statutes governing to serve a three year term to expire on July 1, 1981.

Sincerely,

LEE SHERMAN DREYFUS

Governor

Read and referred to committee on Governmental and Veterans' Affairs.

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

December 13, 1979.

To the Honorable, the Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint Clarence Welsch of Sheboygan as a member of the Hearing Aid Dealers and Fitters Examining Board, to succeed Donald Schaefer of Madison, pursuant to the statutes governing, to serve a six year term to expire on July 1, 1985.

Sincerely,

LEE SHERMAN DREYFUS

Governor

Read and referred to committee on Human Services.

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State of Wisconsin
Office of the Governor
Madison, Wisconsin

December 13, 1979.

To the Honorable, the Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint Dr. Ruth Kramer Jansen as a member of the Nursing Home Administrator's Examining Board, to succeed herself pursuant to the statutes governing, to serve a three year term to expire on July 1, 1982.

Sincerely,
LEE SHERMAN DREYFUS
Governor

Read and referred to committee on Human Services.

State of Wisconsin
Office of the Governor
Madison, Wisconsin

December 13, 1979.

To the Honorable, the Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint LaFayette McKinney of Milwaukee as a member of the Psychology Examining Board serving as the citizen member, to succeed Mark Converse of Green Bay, pursuant to the statutes governing, to serve a three year term to expire on July 1, 1982.

Sincerely,
LEE SHERMAN DREYFUS
Governor

Read and referred to committee on Human Services.

State of Wisconsin
Office of the Governor
Madison, Wisconsin

December 13, 1979.

To the Honorable, the Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint Else E. Lenser of LaCrosse as a member of the

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Real Estate Examining Board, to succeed Russell DeMille of Green Bay, pursuant to the statutes governing, to serve a six year term to expire on July 1, 1985.

Sincerely,
LEE SHERMAN DREYFUS
Governor

Read and referred to committee on Human Services.

State of Wisconsin
Office of the Governor
Madison, Wisconsin

December 13, 1979

To the Honorable, the Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint Dr. Dale Magnuson of River Falls as a member of the Veterinary Examining Board, to succeed Dr. Richard L. Larsen of Weyauwega, pursuant to the statutes governing, to serve a five year term to expire on July 1, 1984.

Sincerely,
LEE SHERMAN DREYFUS
Governor

Read and referred to committee on Agriculture, Labor and Local Affairs.

State of Wisconsin
Office of the Governor
Madison, Wisconsin

December 13, 1979.

To the Honorable, the Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint Marcy Cutting of Whiting, as a member of the Cosmetology Examining Board, to succeed Glenn Wills of Madison pursuant to the statutes governing, to serve a three year term to expire on July 1, 1982.

Sincerely,
LEE SHERMAN DREYFUS
Governor

Read and referred to committee on Human Services.

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State of Wisconsin
Office of the Governor
Madison, Wisconsin

REVISED

December 12, 1979.

To the Honorable, the Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint Thomas M. Boykoff of Madison to the position of Tax Appeals Commissioner to succeed Richard Smrz of Milwaukee at a salary of \$38,000 annually, pursuant to the statutes governing, to serve a six year term to expire on March 1, 1985.

Sincerely,
LEE SHERMAN DREYFUS
Governor

INTRODUCTION OF CLEARINGHOUSE RULES

Clearinghouse Rule 79-63

A rule to create Chs. HSS 303, 304 and 305, relating to discipline in state correctional institutions.

Submitted by Department of Health and Social Services.

Report received from Agency, December 13, 1979.

Referred to committee on Human Services.

Clearinghouse Rule 79-62

A rule to create Ch. HSS 306, relating to security for correctional institutions.

Submitted by Department of Health and Social Services.

Report received from Agency, December 13, 1979.

Referred to committee on Human Services.

Clearinghouse Rule 79-9

A rule to amend Ins. 6.59 (3) and (7), relating to revising certain fees for insurance intermediaries.

Submitted by Office of the Commissioner of Insurance.

Report received from Agency, December 14, 1979.

Referred to committee on Insurance and Utilities.

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Clearinghouse Rule 79-5

A rule creating s. H 62.15 of the Wisconsin Administrative Code, relating to water conserving plumbing fixtures.

Submitted by Department of Health and Social Services.

Report received from Agency, December 13, 1979.

Referred to committee on Human Services.

The committee on Governmental and Veterans Affairs reports and recommends:

Clearinghouse Rule 79-28

A rule to repeal and create A-E 1.15 (4)(a) to (c); to create A-E 1.15 (5)(e), (6)(f) and (7)(e); and to create Ch. A-E 6, relating to the architect's examination; requirement for entrance to examination for professional engineers, designers and land surveyors; and access to public records.

Submitted by Department of Regulation and Licensing, Architects, Professional Engineers, Designers and Land Surveyors Examining Board.

Review period waived, December 13, 1979

MONROE SWAN

Chair

The committee on Agriculture, Labor and Local Affairs reports and recommends:

Clearinghouse Rule 79-17

A rule to repeal and create IND 72.07 (3)(a) and (b), IND 72.08, and IND 90.155 and to create IND 74.04 (9), relating to minimum wages for seasonal, recreational, or educational camps and for caddies, maximum hours of work in amusement or recreational establishments and minimum project costs.

Submitted by Department of Industry, Labor and Human Relations.

Modifications received, December 12, 1979.

No action taken on IND 90.155, December 13, 1979.

JEROME VAN SISTINE

Chair

AMENDMENTS OFFERED

Senate substitute amendment 1 to **Senate Bill 151** by Senator Braun.

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Senate substitute amendment 1 to **Senate Bill 400** by Senator Radosevich.

Senate amendment 1 to **Assembly Bill 636** by Senators Moody, Chilsen, Braun and Kreul.

Senate amendment 1 to engrossed **Assembly Bill 777** by Senators Moody, Chilsen, Braun and Kreul.