

JOURNAL OF THE SENATE

Eighty-Fourth Regular Session

WEDNESDAY, May 7, 1980.

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

PETITIONS AND COMMUNICATIONS

State of Wisconsin
Claims Board

May 1, 1980.

Don Schneider
Senate Chief Clerk
State Capitol
Madison, Wisconsin 53702

Dear Mr. Schneider:

Enclosed is the report of the State Claims Board covering claims heard on April 7, 1980.

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 April 7, 1980, upon the following claims:

<u>Claimant</u>	<u>Amount</u>
1. Robert Kucksdorf	\$ 6,910.30

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2.	Town of Popple River	4,504.37
3.	Carleton & Constance Bissett	121.17
4.	William Hession	3,690.73
5.	Diamond C Services	6,647.03
6.	Harvey Gustafson	4,378.88
7.	Harold Schroeder	200.00
8.	Louis Brookshire	18,225.00
9.	Lowell Klein	6,958.90
10.	Raymond Garvin	8,782.78
11.	Mary Kralj	1,580.72

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

12.	Brian Dammann	\$ 12.00
13.	Lenore Lewis	2,230.00
14.	Robert Walberg	9.63
15.	Robert McConnell	18.00
16.	Beth Creighton	226.40
17.	Michael Maw	50.00
18.	Marc Raduenz	150,000.00
19.	Bette Pedracine	50.00
20.	Viking Insurance Company	181.13
21.	Lincoln County	125.00
22.	Lincoln Cojnty	150.00
23.	Virginia Kloehn	339.51
24.	LeRoy Netts	9,204.00
25.	Sherry Wunder	72.00
26.	Dennis Bruch	42.64

THE BOARD FINDS:

1. Robert Kucksdorf, of Appleton, Wisconsin claims \$1,365.30 medical and hospital expenses, \$545 for damage to his motorcycle, and \$5,000 for pain and suffering, for a total claim of \$6,910.30. On May 3, 1977 while claimant was driving his motorcycle in Outagamie County, as he left Hwy. 41, and proceeded down the "off" ramp to a stop sign, the front wheel of his motorcycle fell off the road causing him to lose control. Claimant suffered injuries when he was thrown from the motorcycle; claimant's insurance carrier has paid \$1,212.30 for medical and hospital expenses. The Board concludes the claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

2. Town of Popple River claims \$4,504.37 as compensatory damages for maintaining town roads which received increased traffic

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as a result of repair of a bridge over the Popple River. The Department of Transportation decided, pursuant to s. 84.02(10), Wis. Stats., to detour traffic over state trunk roads rather than town roads. The town was advised to post its town roads, but chose not to do so. The Board concludes that this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

3. Carleton & Constance Bissett, of Union Grove, Wisconsin claim \$121.17 for damages to five automobiles, caused by a resident of the Southern Wisconsin Center on escape status. Claimant observed the resident pick up a rock and proceed to smash the headlights and tail lights on the vehicles owned and parked on claimant's property. Consistent with a long-standing policy of the Board to deny claims for damages caused by wards of the state on escape status, the Board finds this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

4. William Hession, of Beaver Dam, Wisconsin claims \$3,690.73 as the difference between his salary as a limited term employe and a permanent employe with the Department of Health & Social Services. Claimant was hired as an LTE librarian on October 7, 1975 and his employment continued until June 3, 1978 when the position was established and filled as a permanent position. There are a limited number of positions that can be filled in state government and the determination of which positions will be made permanent is a management prerogative. The Personnel Commission is the proper forum established by the legislature for appeals relating to the civil service system, and the claimant failed to use this forum for resolving his dispute. The Board concludes this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

5. Diamond C Services, Inc. of Mequon, Wisconsin claims \$6,647.03 as the result of cost overruns during the course of a contract with the Division of Corrections, which was effective December 15, 1977, for a maximum amount of \$25,890.00. Increased payments were not provided for in the contract. The Board concludes this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

6. Harvey Gustafson, of Osceola, Wisconsin claims \$4,378.88 for deer damages to his soybean crop during the fall of 1978. The damages amounted to 704 bushels of soybeans at \$6.22 each. Claimant failed to furnish timely notice to the Department of

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Natural Resources pursuant to s. 29.595, Wis. 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 based on equitable principles.

7. Harold Schroeder, of Cambridge, Wisconsin claims \$200 for damages to his sweet corn crop caused by racoons during the harvest season of July, 1979 through the first week of October, 1979. Even though legal title to all wild animals is vested in the state pursuant to s. 29.02 (1), Wis. 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 based on equitable principles.

8. Louis Brookshire, of Milwaukee, Wisconsin claims \$3,224.00 past and estimated future medical expenses, \$5,000.00 pain and suffering and \$10,000.00 permanent disfigurement and scarring for an injury he sustained during the course of a sweat test while a patient at University Hospitals on June 16, 1977. Should the claimant choose to have corrective surgery, the Claims Board recommends that the University of Wisconsin pay for such medical expenses. As the surgery has not yet been performed and the exact dollar amount of claim has not been established, the Board concludes the claim is not one which the state should assume and pay at this time.

9. Lowell Klein, of Waupun, Wisconsin claims \$6,958.90 for loss of annuity payments from the time of his retirement with the State of Wisconsin in October, 1974 until February, 1980. On November 18, 1965 claimant was hired as an Industry Foreman with the State of Wisconsin and prior to July 1, 1969 he made application to be transferred to the status of Correction Officer but was unsuccessful until August 10, 1969. Because claimant was not in a "protective occupation" on July 1, 1969, he was not eligible to have previous service time credited under the protective occupation classification which would increase his monthly annuity payment by \$107.06. The Board concludes the Claims Board is not the appropriate forum to obtain a remedy for this particular claim and recommends the claimant seek legislative relief.

10. Raymond Garvin, of Chicago, Illinois claims \$8,782.78 for state income taxes he paid Wisconsin for the years 1969-1973, based on a determination by the Department of Revenue that claimant was a Wisconsin resident. Claimant also paid Wisconsin income tax for 1974 and 1975. The Tax Appeals Commission determined claimant

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has always been an Illinois resident, and he will obtain a refund of taxes paid for the years 1974 and 1975. The Commission ruled claimant was not eligible for refund for the years 1969-1973 because an appeal was not timely filed, pursuant to s. 71.12 (1), and 73.10 (10) (e), Wis. 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 based on equitable principles. (Roberts dissents)

11. Mary Kralj, of Milwaukee, Wisconsin claims \$1,580.72 for medical expenses and wage loss due to injuries she suffered on December 14, 1977 when as a pedestrian, she was struck by a state car being driven by a Department of Agriculture employe. Claimant's parents' insurance carrier has paid \$1,236.72 in medical and hospital expenses. The Board concludes this claim is not one for which the state is legally liable but the claim for the uninsured portion of medical and hospital expenses and wage loss in the amount of \$529.00 should be paid based on equitable principles.

12. Brian Dammann, of Madison, Wisconsin claims \$12.00 for the replacement cost of his trousers which were ripped during the process of his seclusion at Mendota Mental Health Institute on November 24, 1979. The Board concludes the claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

13. Lenore Lewis, of Waupun, Wisconsin claims \$2,230.00 for the loss of her personal property on January 21, 1979 when the basement storage area at the Waupun State Prison flooded. The property was returned to claimant only slightly damaged and claimant chose to throw it away. The Board concludes this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

14. Robert Walberg, of Waupun, Wisconsin claims \$9.63 for sales tax he alleges was illegally charged him for a period of six months while he was on a Work Release Program at the Oregon State Camp. When quartered in a prison facility, the Department of Health & Social Services is given discretion by s. 56.065 (4) (a), Wis. Stats., to determine the charges to be assessed from work release prisoners. The Board concludes the claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

15. Robert McConnell, of Milwaukee, Wisconsin claims \$18.00 for replacement cost of his eyeglass frames. On December 1, 1979 claimant was hired as a waiter for a Madrigal Dinner at the University of Wisconsin Student Center in Platteville, Wisconsin. As claimant was serving the wine, one of the plastic corks on a wine

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bottle exploded and hit the left lens of claimant's eyeglasses, breaking the frames. The Board recommends payment of the uninsured portion of the damages on equitable principles.

16. Beth Creighton, of Madison, Wisconsin claims \$226.40 for medical expenses when she fainted and fell hitting her front teeth on the bottom rung of a stool during a class demonstration on casting at University Hospitals, Orthotics Laboratory, on May 10, 1979. The Board concludes the claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

17. Michael Maw, of Woodbury, Minnesota claims \$50.00 for reimbursement for his stereo turntable which he alleges was stolen from his dormitory room at the University of Wisconsin-River Falls, during the spring break. The Board concludes the claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

18. Marc Raduenz, of Milwaukee, Wisconsin claims \$150,000.00 for medical expenses, wage loss and pain and suffering due to injuries he sustained on October 1, 1978 when he was involved in an automobile accident with David Hartwig and Steven Neff, who were radio announcers for the University of Wisconsin-Oshkosh radio station WRST-FM. There has been 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 based on equitable principles.

19. Bette Pedracine, of Madison, Wisconsin claims \$50.00 for damages to her car when she tried to enter the Butler Street entrance to the GEF #1 parking facility. The electric door was not completely in the "up" position when claimant proceeded to drive through, causing extensive damage to the roof and trunk of her car. The Board concludes this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

20. Viking Insurance Company of Wisconsin claims \$181.13 subrogation damages. Its insured, George Banfi, submitted a claim to the insurance company for damages to his car when the front door was hit by a truck driven by Carl Sager and owned by the State of Wisconsin, on January 15, 1979, which the insurance company paid. It is a long-standing policy of the Board to deny payment of subrogation claims made by insurance carriers. The Board concludes the claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

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21. Lincoln County claims \$125.00 for reimbursement of attorney fees paid to Attorney Michael Nolan who was appointed by the Circuit Court to appear as indigent defense counsel for a child in the custody of the Department of Health & Social Services at the Lincoln Hills facility. As stated in Section 1655 (34m) (b), Chapter 29, Laws of 1977, the county has been made fiscally responsible for cases such as this. The Board concludes the claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

22. Lincoln County claims \$150.00 for reimbursement of attorney fees paid to Attorney Mark Alberg who was appointed by the Circuit Court to appear as indigent defense counsel for a child in the custody of the Department of Health & Social Services at the Lincoln Hills facility. As stated in Section 1655 (34m) (b), Chapter 29, Laws of 1977, the county has been made fiscally responsible for cases such as this. The Board concludes the claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

23. Virginia Kloehn, of Milwaukee, Wisconsin claims \$339.51 for inheritance taxes erroneously paid by claimant after her husband died on May 24, 1976. Total inheritance tax paid was \$9,420.24; however, due to an error in the computation of the taxable estate on both the original and amended return, the actual inheritance tax overpayment was \$118.04. The Board concludes this claim should be paid in the reduced amount of \$118.04, based on equitable principles.

24. LeRoy Netts, of Beloit, Wisconsin claims \$1,204.00 for alleged damages caused by the Department of Revenue in auditing claimant's business, Netts Equipment Company, in 1977. Claimant alleges the audit directly caused the loss of two of his customers due to unreasonable demands for tax exemption certificates. The certificates were required to verify the exemption granted by the statutes. The Department of Revenue auditor did not contact any customers in conducting the audit. The Board concludes there has been no showing of negligence on the part of the state, its officers, agents or employes and the claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

25. Sherry Wunder, of Sheboygan, Wisconsin claims \$72.00 for the replacement cost of her coat which was stolen from her office coat rack at the Job Service Office in Manitowoc, on December 4, 1979. The Board concludes there has been no showing of negligence on the part of the state, its officers, agents or employes and the claim is not

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

26. Dennis Bruch, of Wisconsin Rapids, Wisconsin claims \$42.64 for the replacement cost of two calculators and a radio which claimant alleges were stolen from a field testing trailer located four miles south of Montello, Wisconsin on State Highway 22, while he was assigned to a bituminous recycling plant by the Department of Transportation on August 26, 1979. The Board concludes there has been no showing of negligence by the state, its officers, agents or employes and the claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

THE BOARD CONCLUDES:

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

Robert Kucksdorf
Town of Pople River
Carleton & Constance Bissett
William Hession
Diamond C Services
Harvey Gustafson
Harold Schroeder
Louis Brookshire
Lowell Klein
Raymond Garvin
Brian Dammann
Lenore Lewis
Robert Walberg
Beth Creighton
Michael Maw
Marc Raduenz
Bette Pedracine
Viking Insurance Company
Lincoln County
Lincoln County
LeRoy Netts
Sherry Wunder
Dennis Bruch

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

Mary Kralj	\$529.00
Robert McConnell	18.00
Virginia Kloehn	118.04

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Dated at Madison, Wisconsin, this 30th day of April, 1980.

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

WARD L. JOHNSON
Representative of Attorney
General

EXECUTIVE COMMUNICATIONS

State of Wisconsin
Office of the Governor
Madison, Wisconsin

May 1, 1980.

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
21 -----	261 -----	April 30, 1980
97 -----	262 -----	April 30, 1980
231 -----	263 -----	April 30, 1980
279 -----	264 -----	April 30, 1980
280 -----	265 -----	April 30, 1980
312 -----	266 -----	April 30, 1980
335 -----	267 -----	April 30, 1980
351 -----	268 -----	April 30, 1980
391 -----	269 -----	April 30, 1980
513 -----	270 -----	April 30, 1980
533 -----	271 -----	April 30, 1980
542 -----	272 -----	April 30, 1980

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579 ----- 273 ----- April 30, 1980

Sincerely,
LEE SHERMAN DREYFUS
Governor

SENATE CLEARINGHOUSE RULES

Clearinghouse Rule 80-75

A rule to repeal Chs. TR 9 and 17, relating to disability determination procedures and payroll reporting procedures for the State Teachers Retirement System.

Submitted by the Department of Employee Trust Funds.

Report received from Agency, May 6, 1980.

Referred to committee on Education and Revenue, May 7, 1980.

Clearinghouse Rule 79-57

A rule to create Ch. NR 345, relating to removal of material from the beds of waterways.

Submitted by the Department of Natural Resources.

Report received from Agency, May 5, 1980.

Referred to committee on Natural Resources and Tourism, May 7, 1980.

Clearinghouse Rule 80-26

A rule to repeal Tax 13.05 (4); to renumber 13.05 (5) and (6); to amend 13.06 (3) (c) 7; and create 13.05 (6) and (7), relating to the distribution of discretionary payments by the Mining Investment and Local Impact Fund Board.

Submitted by the Mining Investment & Local Impact Fund Board.

Report received from Agency, May 6, 1980.

Referred to committee on Natural Resources and Tourism, May 7, 1980.

Clearinghouse Rule 80-74

A rule to repeal Ret 2.53 and 5.13, relating to requirement of birth evidence by the Wisconsin Retirement Fund.

Submitted by the Department of Employee Trust Funds.

Report received from Agency, April 30, 1980.

Referred to committee on Education and Revenue, May 7, 1980.

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COMMITTEE REPORTS

The committee on Natural Resources and Tourism reports and recommends:

Clearinghouse Rule 80-37

A rule to create PSC 134.062(2)(g), relating to disconnection of natural gas service for noncompliance with Wisconsin statutes, Commission rules or Commission orders.

Submitted by Public Service Commission.

No action taken.

THOMAS W. HARNISCH

Chair

State of Wisconsin
Revisor of Statutes Bureau
Madison, Wisconsin

May 1, 1980

Donald J. Schneider
Senate Chief Clerk
State Capitol
Madison, Wisconsin

Dear Mr. Schneider:

The following rules have been published and are effective:

Clearinghouse Rule 79- 5 effective May 1, 1980.

Clearinghouse Rule 79-19 effective May 1, 1980.

Clearinghouse Rule 79-47 effective May 1, 1980.

Clearinghouse Rule 79-68 effective May 1, 1980.

Clearinghouse Rule 80- 4 effective May 1, 1980.

Clearinghouse Rule 80- 6 effective May 1, 1980.

Clearinghouse Rule 80- 8 effective May 1, 1980.

Clearinghouse Rule 80-11 effective May 1, 1980.

Sincerely,

GARY L. POULSON

Assistant Revisor

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CHIEF CLERK'S REPORT

The chief clerk records:

Senate Bill 21
Senate Bill 97
Senate Bill 231
Senate Bill 279
Senate Bill 280
Senate Bill 312
Senate Bill 335
Senate Bill 351
Senate Bill 291
Senate Bill 513
Senate Bill 533
Senate Bill 542
Senate Bill 579

Correctly enrolled and presented to the Governor on April 30, 1980.

Senate Bill 26
Senate Bill 59
Senate Bill 62
Senate Bill 115
Senate Bill 128
Senate Bill 156
Senate Bill 166
Senate Bill 171
Senate Bill 195
Senate Bill 222
Senate Bill 249
Senate Bill 252
Senate Bill 256
Senate Bill 301
Senate Bill 316
Senate Bill 332
Senate Bill 344
Senate Bill 362
Senate Bill 382
Senate Bill 400
Senate Bill 409
Senate Bill 432
Senate Bill 461
Senate Bill 472
Senate Bill 475

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Senate Bill 551
Senate Bill 570

Correctly enrolled and presented to the Governor on May 2, 1980.

CHIEF CLERK'S CORRECTION

Suggested by Legislative Reference Bureau

Senate Bill 362, assembly substitute amendment 1

1. On page 56, line 13, delete "Notwithstanding" and substitute "Notwithstanding".

Senate Bill 515

1. On page 1, line 10, substitute "15.137 (1)" for "15.137 (2)".