

JOURNAL OF THE SENATE [April 28, 1982]

STATE OF WISCONSIN

# Senate Journal

Eighty-Fifth Regular Session

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WEDNESDAY, April 28, 1982.

10:00 A.M.

The senate met.

The senate was called to order by the president of the senate.

By request of Senator Bablitch, with unanimous consent, the calling of the roll was dispensed with.

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## PETITIONS AND COMMUNICATIONS

State of Wisconsin  
Claims Board

April 26, 1982

Don Schneider

Senate Chief Clerk

State Capitol

Madison, Wisconsin

Dear Mr. Schneider:

Enclosed is the report of the State Claims Board covering claims heard on April 19, 1982.

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.

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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**

**State of Wisconsin  
Claims Board**

The State Claims Board conducted hearings at the State Capitol Building, Madison, on April 19, 1982, upon the following claims:

<b>Claimant</b>	<b>Amount</b>
Northern Hatcheries, Inc. & Northern Pullets, Inc.	\$10,814.33
Town of St. Germain	5,821.75
David Manning	731.00
Village of St. Cloud	13,364.41
Northern Christmas Tree Growers	10,160.00
John Galen	5,665.00
W.H.Pugh Coal Co.	210,000.00

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

Julien Ulrich	\$517.00
State Farm Insurance Co.	1,607.47
State Farm Insurance Co.	443.27
Milwaukee Mutual Insurance Co.	960.00
James Schmiedlin	344.50
James Cmeyla	41.57
Sandra Hunt	30.96

THE BOARD FINDS:

1. Northern Hatcheries, Inc. and Northern Pullets, Inc. of Beaver Dam, claim \$10,814.33 for assessments of sales and use tax of the Department of Revenue on December 1, 1980, for purchases of vaccines injected into claimants' baby chickens. Northern Hatcheries, Inc., is considered in the business of farming as they raise chickens. Section Tax 11.12(4)(b) 3 b of the Wisconsin Administrative Code states "Medicines (including antibiotics) which are administered to animals or poultry directly or as an additive to drinking water are taxable." The vaccines were purchased ex-sales tax from out of state suppliers or with a resale certificate. Claimants filed a petition for redetermination of the assessment on January 19, 1981. Consideration by the Department of Revenue was given to the petition for redetermination and was denied on July 16, 1981. The Department of Revenue advised claimants that if they disagreed with the redetermination they could appeal to the Wisconsin Tax Appeals Commission within 60 days. However, claimants did not file within 60 days and the redetermination became final in accordance with s. 77.59(6)(a), Stats. The Board concludes there has been insufficient showing of negligence on the part of the state, its officers, agents, or employes, and 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.

2. Town of St. Germain claims \$5,821.75 for expenses incurred for a supervised assessment of the Town, ordered by the Department of Revenue. The Town alleges that the Department of Revenue violated s. 70.75, Stats., by denying the petition for reassessment of the Town and requiring the Town to utilize and pay for special supervision of succeeding assessments. On January 5, 1979, the Department of Revenue received a valid petition for reassessment pertaining to the Town of St. Germain and thereafter held a public hearing to investigate the reassessment for the Town. The Department of Revenue issued an order dated February 28, 1979, which stated, in part, "while there are inequities in the 1978 assessment, they are not extensive enough to warrant a reassessment for the year 1978. . . (and) that the inequities are of the scope and nature to be effectively remedied through a supervised assessment pursuant to s. 70.75(3)". On April 24, 1970, a supplementary order appointed James Laird, Real Estate Appraisal Consultants, Inc., and Stanley Walczak, Department of Revenue, as special supervisors. During May, 1979, after the Laird Company had begun work, the Town of St. Germain requested a meeting with the Department of Revenue, during which it was agreed that Revenue's order providing

for supervised assessment for 1979 would be withdrawn if the Town would arrange for a revaluation for the year 1980. The Town contends that the work completed by Laird Company was then obsolete due to changes in the state's manual for the 1980 assessment year and was of no value to the Town. Section 70.75(4), Stats., provides that, "all costs of the Department of Revenue in connection with reassessment of special supervision under this section shall be borne by the taxation district." Taxpayers could appeal their new assessments to the circuit court under s. 70.47(13), Stats. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes, and 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. David Manning of Madison, claims \$731.00 for reimbursement of items of clothing and other property allegedly stolen from his personally assigned state-owned vehicle on January 16, 1982, while it was parked in the Milwaukee Area Technical College parking lot during claimant's off duty non-business hours. As a result of vandalism, the vehicle's window was smashed on the driver's side and several items in the vehicle were stolen. The Board concludes there has been no showing of negligence on the part of the state, its officers, agents, or employes, and 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. Village of St. Cloud claims \$13,364.41 for cost-sharing reimbursement under the Federal Land and Water Conservation Fund program for payments made by the Village Park. Reimbursements for certain costs of the project were denied by the Department of Natural Resources because the required state and federal competitive bidding procedures were not following by the Village in letting contracts for construction of portions of the project. Parts of the project were not properly advertised prior to obtaining bids. The Village acted in good faith in letting the contracts. The project has been adequately constructed and is now in service. The Board recommends that the claim be paid in the reduced amount of \$9,825.30, based on equitable principles. The Board concludes that under the authority of s. 16.007(6m), Stats., payment of this claim shall be made from the Department of Natural Resources appropriation s.20.370(4) (iu), Stats.

5. Calvin Frelk owner of Northern Christmas Tree Growers of Merrilan, claims \$10,160.00 for alleged deer damage to his Christmas trees during January, 1982. Section 29.595, Stats. previously authorized the Department of Natural Resources to pay for damages caused by deer to trees grown for sale to or by Christmas

tree dealers, provided proper notice was given to the Department. However, the statutory provision enabling payment has been repealed by the state legislature by Chapter 34, Laws of 1979, which provides that no payment can be made for damages occurring after March 31, 1980. Therefore, the Board feels it cannot honor claims of this type and 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. John Galen of Neillsville, claims \$5,665.00 for alleged deer damage to his field corn crop in Clark County which occurred between September 15, and December 20, 1981. Section 29.595, Stats., previously authorized the Department of Natural Resources to pay damages caused by deer to crops on agricultural lands, provided proper notice was given to the Department. However, the statutory provision enabling payment has been repealed by the state legislature by Chapter 34, Laws of 1979, which provides no payment can be made for damages occurring after March 31, 1980. Therefore, the Board feels it cannot honor claims of this type and 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.

7. W.H. Pugh Coal Company of Racine, claims \$210,000.00, for the rental value of a one-acre tract of land located north of the point where the Root River empties into Lake Michigan from September 1, 1972, to September 1, 1977, at the rate of \$3,500 per month. On August 14, 1977, the Racine County Circuit Court determined claimant to be the exclusive owner of the property. Originally, the Coast Guard sought to erect a Coast Guard station several feet from the shore which was owned by the claimant's predecessor in title. For a nominal consideration (1¢) the riparian owner gave the United States an easement of ingress and egress over his shore lands so the Coast Guard could reach its station to be built on a crib out in the lake. On May 12, 1976, a quit claim deed from the United States to the State of Wisconsin was filed in the Office of the Register of Deeds of Racine County which conveyed no interest in said property to the State of Wisconsin. Upon abandonment by the United States, the State of Wisconsin proceeded to make use of the property by leasing it to Racine County for its Water Safety Patrol Service. Claimant alleges that as owner he is entitled to recover from the state the value of the use of the property. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents, or employes, and 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.

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8. Juliene Ulrich of Madison, claims \$517.00 for loss of a court reporting machine, case and tripod, allegedly stolen from the Department of Health and Social Services Administrative Hearings Office, on January 4, 1982, where claimant is employed as a stenographic court reporter. On January 4, 1982, claimant did not report to work due to a snow storm. However, as a result of an oversight by other employes, the office door was left unlocked during the day while no one else was in the immediate area. Claimant's machine was then stolen. The Board concludes the claim should be paid based on equitable principles. The Board further concludes that under the authority of s. 16.007(6m), Stats., payment of this claim shall be made from the Department of Health and Social Services appropriation s.20.435(8)(a), Stats.

9. State Farm Insurance Company of Appleton, claims \$1,607.47 subrogation damages. Its insured, Nancy Duket, submitted a claim to the insurance company for damages to her automobile which occurred on December 9, 1980. The damage was caused by a juvenile allegedly under custody of Lincoln Hills School in Irma. However, on the date of the incident, the juvenile was in nonsecure detention at Nova House Group Home, a private nonprofit group home. Consistent with a long-standing policy of this Board concerning subrogation claims, 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.

10. State Farm Insurance Company of Racine, claims \$443.27 subrogation damages. Its insured, Connie Crawford, submitted a claim to the insurance company for damages to her automobile which occurred on November 19, 1981. The damage was allegedly caused by a resident of the Southern Wisconsin Center who smashed the vehicle's windshield and rear window while the vehicle was parked at the Center. Consistent with a long-standing policy of this Board concerning subrogation claims, 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.

11. Milwaukee Mutual Insurance Company claims \$910.00 subrogation damages and \$50 for its insured's deductible. Its insured, Erna Schnell, submitted a claim to the insurance company for damages to her automobile incurred on September 18, 1982, when her 1972 Ford was taken to the Fox Lake Correctional Institution for repair by student inmates. During the course of welding on the vehicle, a fire ignited, damaging the vehicle. Consistent with a long-standing policy of this Board concerning subrogation claims, 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.

12. James Schmiedlin of Lodi, claims \$344.50 for reimbursement of medical expenses incurred as a result of incorrect information he was allegedly given by employes of the University Hospital and Clinic, when he began employment there in January 1981. Claimant was informed that he was eligible to enroll in a group health plan, and that coverage would be in effect for him as of February 1, 1981. Relying upon this advice, claimant permitted his former insurance coverage to lapse. It was subsequently determined that he was not eligible for coverage under the group health insurance plan he had chosen because of his status as a Wisconsin retirement fund annuitant. By that time, however, claimant had incurred medical expenses as a result of a shoulder injury. A bill in the amount of \$208.50 from Group Health Cooperative and a \$35 bill for an x-ray were sent to claimant. Had claimant been covered under the health insurance plan, he would have paid \$12.42 premium for coverage during the two-month period when the medical expenses occurred. The Board concludes the claim should be paid in the reduced amount of \$231.08, based on equitable principles. The Board further concludes that under the authority of s. 16.007(6m), Stats., payment of this claim shall be made from the University of Wisconsin appropriation s.20.285(1)(kb), Stats.

13. James Cmeyla of Milwaukee, claims \$41.57 for replacement of his jacket allegedly damaged while acting within the scope of his employment for the Department of Transportation on January 6, 1982. Claimant was assisting in the transfer of equipment from one building to another during which his jacket was destroyed by chemicals which leaked from a bottle he was carrying. The Board concludes the claim should be paid, based on equitable principles. The Board further concludes that under the authority of s. 16.007(6m), Stats., payment of this claim shall be made from the Department of Transportation appropriation s .20.395(5)(cq), Stats.

14. Sandra Hunt of Madison, claims \$30.96 for damage to a blouse and two pair of slacks which occurred while she was filing material in employe personnel files as part of her duties as an employe of the Department of Industry, Labor and Human Relations during January and February, 1982. Grease from the file drawers permanently damaged the clothing. Claimant should have had knowledge of the grease after the first pair of pants were damaged. The Board concludes claimant should receive \$23.97 in full settlement of her claim. The Board further concludes that under the authority of s.16.007(6m), Stats., payment of this claim shall be

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made from the Department of Industry, Labor and Human Relations appropriation s.20.445(1)(z), Stats.

**THE BOARD CONCLUDES:**

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

Northern Hatcheries, Inc. & Northern Pullets, Inc.  
Town of St. Germain  
David Manning  
Northern Christmas Tree Growers  
John Galen  
W.H. Pugh Coal Company  
State Farm Insurance Company  
State Farm Insurance Company  
Milwaukee Mutual Insurance Company

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

Julienne Ulrich	\$517.00
James Schmiedlin	231.08
James Cmeyla	41.57
Sandra Hunt	23.97

**THE BOARD RECOMMENDS:**

1. Payment of \$9,825.30 be made to the Village of St. Cloud for reimbursement of a cost-sharing project under the Federal Land and Water Conservation Fund for improvements to the Village Park.

Dated at Madison, Wisconsin, this 26th day of April, 1982.

**GERALD D. KLECZKA**  
Senate Finance Committee

**VIRGIL D. ROBERTS**  
Assembly Finance Committee

**MARGARET S. LEWIS**  
Representative of Governor

**EDWARD D. MAIN**  
Representative of Secretary of  
Administration

**WILLIAM H. WILKER**  
Representative of Attorney  
General

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## EXECUTIVE COMMUNICATIONS

State of Wisconsin  
Office of the Governor  
Madison, Wisconsin

April 27, 1982

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
181 -----	300 -----	April 27, 1982
219 -----	301 -----	April 27, 1982
248 -----	302 -----	April 27, 1982
351 -----	303 -----	April 27, 1982
381 -----	304 -----	April 27, 1982
382 -----	305 -----	April 27, 1982
466 -----	306 -----	April 27, 1982
520 -----	307 -----	April 27, 1982
569 -----	308 -----	April 27, 1982
570 -----	309 -----	April 27, 1982
572 -----	310 -----	April 27, 1982
630 -----	311 -----	April 27, 1982
633 -----	312 -----	April 27, 1982
677 -----	313 -----	April 27, 1982
790 -----	314 -----	April 27, 1982
791 -----	315 -----	April 27, 1982
823 -----	316 -----	April 27, 1982

Sincerely,  
LEE SHERMAN DREYFUS  
Governor

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## SENATE CLEARINGHOUSE ORDERS

The committee on Insurance and Utilities reports and recommends:

### Clearinghouse Rule 82-7

AN ORDER to amend Ins 2.15-Appendix I, relating to annuity benefit solicitation.

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**No action taken.**

**KURT A. FRANK**  
**Chair**

**Upon motion of Senator Bablitch the senate adjourned until  
10:00 A.M. Thursday, April 29.**

**10:01 A.M.**