

Eighty-Seventh Regular Session

WEDNESDAY, October 29, 1986

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

PETITIONS AND COMMUNICATIONS

State of Wisconsin
Wisconsin Housing and
Economic Development Authority
October 23, 1986

To the Honorable the Legislature

As you may know, on October 21, 1986, Governor Earl announced a new agricultural lending program, called the WHEDA NEW START Loan Program, which will be funded and administered by the Wisconsin Housing and Economic Development Authority (WHEDA). Enclosed is a summary of WHEDA's NEW START Loan Program for your information.

Applications for WHEDA NEW START loans will be accepted beginning on Monday, October 27, 1986. Funding reservations will be made on a first come, first served basis. We are suggesting that interested farmers contact their local lenders first for information concerning WHEDA NEW START Loan applications.

Should your constituents wish further information regarding program requirements, they may call the WHEDA toll-free information service at 1-800-362-2767 during normal business hours.

Best Wishes,
ED JACKAMONIS
Executive Director

State of Wisconsin
Claims Board
October 21, 1986

To the Honorable the Senate

Enclosed is the report of the State Claims Board covering claims heard on October 8, 1986.

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

STATE OF WISCONSIN CLAIMS BOARD

The State Claims Board conducted hearings at the State Capitol Building, Madison, Wisconsin on October 8, 1986, upon the following claims:

Claimant	Amount
Dr. Werner Langheim	\$ 3,280.00
Wojciehowski Bros. Farms	53,068.18
Nancy Kopp Schultz	6,460.67
Valley Cabinet, Inc.	10,639.00
St. Croix County	13,163.30
Jim & Bonnie Casper	964.00
US Fidelity & Guaranty Co.	197,642.51
Gordon DeRosso	570,000.00
Zante Painting Co.	45,965.00
Verdell & Dorothy Hallingstad	500,000.00
Walter Baritsky	250,000.00

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

AudioVision, Inc.	\$ 307.96
Wayne Steffen	281.14
Earl McCormick	332.68
Edward Germain	50.00
Martha Bodenbach	100.00
Jeffrey Edge	150,000.00
Mrs. Vernon Schwertel	78.37
Leino's 76	603.03
Brian Merkel	59.84
Stephen Frey	131.25
Mary Jeffries	137.00
Nancy Kaiser	318.89
Douglas Emmons	156.82

THE BOARD FINDS:

1. Werner Langheim, M.D., of Madison, claims \$3,280.00 for payment of medical services he provided to a veteran, Walter McIntyre, from April 30 to May 8, 1974. Mr. McIntyre died on May 10, 1974. The Department of Veterans Affairs may extend to any veteran or dependents such temporary emergency aid as it deems advisable to prevent want or distress, pursuant to s. 45.351(1), Stats. An application for payment of Mr. McIntyre's medical expenses was denied by the Department of Veterans Affairs on August 2, 1974, based on the absence of legal responsibility by the widow for payment of the veteran's medical 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. Wojciehowski Brothers Farms of Porterfield claims \$53,068.18 for deer damage to their corn fields located in Marinette County during 1985 and 1986. Statutory authority for state aid for deer damages on agricultural lands was repealed in 1980. A county-administered wildlife damage and abatement program was established in 1983 by Section 29.598, Stats. State

aids are available to counties for administering these voluntary programs if a county chooses to participate. Marinette County did not participate in the voluntary program until 1986. It is the Board's opinion that this is a problem that the Department of Natural Resources and the Legislature may want to address. 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.

3. Nancy Kopp Schultz of West Allis claims \$6,460.67 for refund of state inheritance tax she paid after the death of her ex-husband, Jeffrey Philip Kopp, on July 14, 1984. The rate of inheritance tax imposed is determined by the relationship between the decedent and the beneficiary at the date of death. Although claimant and Jeffrey Kopp were divorced in 1984, claimant is asking that she be taxed as a surviving spouse rather than an ex-spouse. 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.

4. Valley Cabinet, Inc. of DePere claims \$17,102.20 for refund of sales-use tax, corporate franchise tax and interest paid as a result of a Department of Revenue field audit for the years 1975 through 1978. As a result of the audit, the Department of Revenue held that claimant was not a manufacturer and not eligible for the exemptions and credit provided by ss. 77.54(2), (6)(a) and 71.043, Stats. In 1981, the Wisconsin Tax Appeals Commission decided two cases involving similar type operations and held that these operations were manufacturing. In 1981, claimant filed claims for refunds with the Department of Revenue for the taxes paid as a result of the 1975-78 field audit plus a refund claim for the years 1979 and 1980. The Department of Revenue granted refunds for 1979 and 1980 but were denied the 1975 through 1978 claims because those years were closed to subsequent adjustment by finalization of the field audit. The Claims Board disavows as precedent its October 17, 1983, decision of the claim of Baraboo Sysco Food Services, Inc. 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.

5. St. Croix County claims \$13,163.30 for indemnification under the terms of the Comprehensive Employment & Training Act (CETA) worksite agreement entered into the County and the Department of Health and Social Services in 1982. Under the worksite agreement, David Swenby was employed as a farmhand at the St. Croix Community Correctional Center while he was an inmate. On December 7, 1982, Mr. Swenby sustained an injury to his knee while performing his assigned work. On March 16, 1984, the Department of Industry, Labor and Human Relations determined that St. Croix County was the employer at the time of the injury and ordered St. Croix County to pay the expenses relating to Mr. Swenby's injury. 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.

6. Jim and Bonnie Casper of Chilton claim \$149.00 for uninsured dental expenses and \$815 for future dental expenses allegedly necessitated by an injury sustained by their daughter, Amy, at the Taycheedah Correctional Institution on August 19, 1985. Amy was playing on the Institute playground and fell off the merry-go-round chipping her two front teeth. 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.

7. United State Fidelity and Guaranty Company of Milwaukee claims \$197,642.51 for damages relating to a contract bond dated December 28, 1983. Claimant, as surety, executed the bond for a contract between the Department of Transportation and Oscar J. Druml for construction of State Highway 100 in Milwaukee County. During the performance of the contract, claims of unpaid materialmen, laborers and subcontractors were presented to claimant. Claimant contends that it notified the state of the situation by letter dated August 17, 1984, and requested that no further contract funds, including retainages, be paid to Oscar Druml without claimant's prior consent. The Department of Transportation does not have any evidence of that notice. The Department of Transportation paid the contractor as the work was completed and approved by the project engineer. The Board concludes this claim is denied.

8. Gordon DeRosso and DeRosso Landfill Company of Milwaukee claim \$570,000.00 for damages relating to an alleged breach of contract between claimant and the Department of Transportation. In 1983, the Department of Transportation entered into a contract with Mann Brothers Sand & Gravel, Inc. for the relocation of State Highway 100. A provision of the contract provided that fill material necessary to construct the embankment, would be taken from the property of Gordon DeRosso. On October, 1983, Mann Brothers began hauling sand from claimant's landfill to the embankment project. The Department of Transportation subsequently determined that claimant's landfill material was unsuitable and on February 17, 1984, issued a contract change order to Mann Brothers changing the borrow material to be used to complete the embankment. Claimant commenced an action in Circuit Court which was dismissed in February 1986, for failure to follow the procedures of s. 775.01, 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.

9. Zante Painting Company of Alsip, Illinois, claims \$45,965.00 for payment of work performed under a contract between the Department of Transportation and Tony & Sons Painting & Decorating Contractor, Inc., involving the painting of bridge structures during 1984. The contractor, Tony & Sons, hired claimant and several

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other companies, to do the painting but made no arrangements with the Department of Transportation for payment. In June and July 1985, DOT declared Tony & Sons in default of all contracts. The surety is obligated to pay all valid claims for labor performed or materials furnished under the contract between the Department of Transportation and Tony & Sons; however, the surety, Union Indemnity, was forced into liquidation by order of the Supreme Court dated July 16, 1985. Claimant has not provided any evidence that it has properly paid its laborers and suppliers for the work performed on this Department of Transportation project. 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.

10. Verdell and Dorothy Hallingstad of Sparta claim \$500,000.00 for compensation for mental anguish, defamation, assassination of name and character, pain and suffering and hospital expenses relating to the acts of a retired circuit court judge who presided as a reserve judge in the Monroe County Court from December 1983 to April, 1985, without, allegedly, subscribing and filing an oath of office. In 1983, Reserve Judge Richard G. Harvey, Jr. presided in a commitment proceeding under Chapter 51, Stats., in the commitment of claimant's son. The Board finds that any acts of Reserve Judge Harvey during December 1983 through April 1985, were valid as the acts of a de facto officer. 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.

11. Walter Baritsky of Necedah claims \$250,000.00 for compensation for mental anguish and torment, loss of family and business, loss of reputation, harassment by public officials, loss of credibility, public ridicule, plus embarrassment and inability to secure employment allegedly relating to the actions of Judge Robert F. Curtin and Reserve Judge Richard G. Harvey, Jr. in cases wherein claimant was a party in 1983. Claimant contends the actions of Judge Curtin and Reserve Judge Harvey while presiding over his cases were unlawful and invalid because they had not filed oaths of office prior to assuming their duties. The Board finds that any acts taken by Judge Curtin and the action taken by Reserve Judge Harvey in another case, were valid as the acts of de facto officers. 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.

12. AudioVision, Inc. of Brown Deer claims \$307.96 for expenses incurred as a result of an error by the Secretary of State's office in reserving a corporate name. As a result of the error, a different corporate name had to be selected and an Amendment to the Articles of Incorporation had to be filed to change the corporation name to AudioVision, Inc. The Board concludes the

claim should be paid based on equitable principles. The Board further concludes, under s. 16.007(6m), Stats., payment of this claim should be made from the Secretary of State's appropriation s. 20.575(1)(g), Stats.

13. Wayne Steffen of Cudahy claims \$281.14 for replacement of his drafting equipment allegedly stolen from the field office in Plain where he is employed by the Department of Transportation. On April 23, 1986, unknown person(s) broke into the field construction office and stole claimant's drafting equipment. 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.

14. Mrs. Earl McCormick of North Fond du Lac claims \$332.68 for uninsured medical expenses incurred by her husband as a result of injuries he sustained from a fall on an icy sidewalk on December 21, 1984, at the Wisconsin Veterans Home where he performed volunteer service work. The Board concludes the claim should be paid in the reduced amount of \$299.41, or 90% of the medical expenses based on equitable principles. The Board further concludes, under authority of s. 16.007(6m), Stats., payment should be made from the Department of Veterans Affairs appropriation s. 20.485(1)(gk), Stats.

15. Edward Germain of Waunakee claims \$50.00 for the uninsured damages to his automobile windshield allegedly incurred on April 29, 1986, while it was parked in Goodland Hall parking lot at the Mendota Mental Health Institute, where he is employed. There is no evidence of how the damage actually occurred. 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.

16. Martha Bodenbach of Sturtevant claims \$100.00 for replacement of her eyeglasses which were damaged on May 21, 1986, by a resident of the Southern Wisconsin Center, where she is employed. 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.

17. Jeffrey Edge of Waupun claims \$150,000.00 for damages allegedly resulting from an injury he sustained while an inmate at the Oregon State Farm on September 24, 1986. Claimant was hit by a tractor that was being operated by another inmate at the farm. Claimant's medical expenses were paid by the Department of Health and Social Services. 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.

18. Mrs. Vernon Schwertel of Arcadia claims \$78.37 for damage to the interior of her home caused by a wild deer which jumped through a breezeway window and became trapped in the house on November 24, 1985. 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. 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.

19. Leino's 76 of Washburn claims \$603.03 for uninsured expenses incurred to test its underground storage tanks, as requested by the Department of Natural Resources in 1984. The Department of Natural Resources requested that claimant perform the tests on its gasoline tanks and underlying soils due to a high level of gas fumes detected in the City of Washburn in June 1984. The tests failed to establish the cause of the gasoline vapors. 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.

20. Brian Merkel of Fish Creek claims \$49.84 for replacement of a pair of steel-toed safety shoes which were damaged while he was mowing grass at the Peninsula State Park golf course on June 16, 1986. Claimant is a limited term employe of the Department of Natural Resources and the accident occurred while he was engaged in his employment with the Department. The Board concludes the claim should be paid based on equitable principles by check issued jointly to Brian Merkel and to Peninsula Golf Associates. The Board further concludes under authority of s. 16.007(6m), Stats., payment should be made from the Department of Natural Resources appropriation s. 20.370(1)(mu), Stats.

21. Stephen Frey of New London claims \$131.25 for damages incurred to his vehicle as he entered parking lot X at the University of Wisconsin-Stevens Point on June 18, 1986. The parking gate arm malfunctioned and hit his car several times as he was attempting to pass through. The Board concludes the claim should be paid based on equitable principles. The Board further concludes under authority of s. 16.007(6m), Stats., payment should be made from the University of Wisconsin appropriation s. 20.285(1)(a), Stats.

22. Mary Jeffries of St. Charles, Illinois, claims \$137.00 for expenses incurred as a result of ear damage she allegedly sustained while attending a rock concert at the University of Wisconsin-Stevens Point on March 11, 1986. Claimant contends that the noise level at the concert caused her to suffer tinnitus. Signs were posted at the concert warning of possible noise hazard at this particular event. 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.

23. Nancy Kaiser of Madison claims \$318.89 for automobile damages allegedly incurred on June 25, 1986, in Lot 60 at the University of Wisconsin-Madison. As claimant pulled out of a parking space, she scraped the side of her car on a cement post approximately 17 inches high. Claimant's insurance paid \$218.89 for the repair costs. 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.

24. Douglas Emmons of Kaneohe, Hawaii, claims \$156.82 for replacement of his automobile windshield allegedly broken by a softball hit from one of the University of Wisconsin-Madison campus ball fields located on Observatory Drive on June 23, 1986. 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.

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

Dr. Werner Langheim
 Wojciehowski Bros. Farm
 Nancy Kopp Schultz
 Valley Cabinet, Inc.
 St. Croix County
 Jim & Bonnie Casper
 United States Fidelity & Guaranty Company
 Gordon DeRosso
 Zante Painting Company
 Verdell & Dorothy Hallingstad
 Walter Baritsky
 Wayne Steffen
 Edward Germain
 Martha Bodenbach
 Jeffrey Edge
 Mrs. Vernon Schwertel
 Leino's 76
 Mary Jeffries
 Nancy Kaiser
 Douglas Emmons

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

AudioVision, Inc.	\$307.96
Earl McCormick	299.41
Brian Merkel	59.84
Stephen Frey	131.25

Dated at Madison, Wisconsin this 17th date of October, 1986.

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GARY R. GEORGE
Senate Finance Committee
MARLIN D. SCHNEIDER
Assembly Finance Committee
JUAN B. COLAS
Representative of Governor
EDWARD D. MAIN
Representative of Secretary of
Administration
WILLIAM H. WILKER
Representative of Attorney
General

Submitted by Department of Natural Resources.
Report received from agency, October 24, 1986.
Referred to committee on Energy and Environmental
Resources, October 29, 1986.

Clearinghouse Rule 86-125

AN ORDER to renumber HSS 302.19 (9); to amend HSS 302.19 (7) and Note, 310.01 (2) (e) and (f), 310.025 (1), 310.04 (2) (b), 310.05 (2) and Note, 310.07 (2) and (3), 310.08 and Note, 310.09 (1), (3), (4) and (10) and Note, 310.10 (1), 310.11 (1) (2) and (6), 310.12 and Note and 310.14 and Note; to repeal and recreate HSS 310.02; and to create HSS 302.19 (9), 310.01 (2) (g) and 310.04 (5), relating to inmate complaint procedures at adult correctional institutions.

Submitted by Department of Health and Social Services.

Report received from agency, October 24, 1986.

Referred to committee on Agriculture, Health and Human Services, October 29, 1986.

Clearinghouse Rule 86-126

AN ORDER to renumber HSS 306.16 (5) to (8); to amend HSS 303.59 and Note, 306.16 (1) and Note (1st to 4th paragraphs); and to create HSS 306.16 (5) and 306.215, relating to detecting the ingestion of intoxicants and other prohibited substances by inmates of adult correctional institutions.

Submitted by Department of Health and Social Services.

Report received from agency, October 22, 1986.

Referred to committee on Agriculture, Health and Human Services, October 29, 1986.

Clearinghouse Rule 86-147

AN ORDER to amend NR 10.01 (2) (f) 1; and to repeal and recreate NR 10.01 (2) (f) 2, relating to modifications for the 1987 wild turkey season.

Submitted by Department of Natural Resources.

Report received from agency, October 24, 1986.

Referred to committee on Energy and Environmental Resources, October 29, 1986.

Clearinghouse Rule 86-153

AN ORDER to renumber ILHR 7.04 (1); and to create ILHR 7.04 (1), (8m), (10m), (19h), (19r), (27m), (28m) and (32), subchapter VII of chapter ILHR 7 and ILHR 7.37 (3) (p) and (q), relating to blasting resultants.

Submitted by Department of Industry, Labor & Human Relations.

Report received from agency, October 27, 1986.

Referred to committee on Labor, Business, Veterans Affairs and Insurance, October 29, 1986.

Clearinghouse Rule 86-179

AN ORDER to amend chapter Trans 503 (title), 503.01, 503.05, 503.06 and 503.07, relating to motor-driven cycle, moped and motor bicycle safety program.

Submitted by Department of Transportation.

Report received from agency, October 24, 1986.

EXECUTIVE COMMUNICATIONS

State of Wisconsin
Office of the Governor

October 23, 1986

To the Honorable, the Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint RINALDO BONACCI of Ashland to the Board on Aging and Long Term Care pursuant to the statute governing, to serve a term to expire May 1, 1989.

Respectfully,

ANTHONY S. EARL
Governor

Read and referred to committee on Aging, Banking, Commercial Credit and Taxation.

SENATE CLEARINGHOUSE ORDERS

Clearinghouse Rule 86-8

AN ORDER to create chapter NR 145, relating to county administration of the private well code.

Submitted by Department of Natural Resources.

Report received from agency, October 24, 1986.

Referred to committee on Energy and Environmental Resources, October 29, 1986.

Clearinghouse Rule 86-76

AN ORDER to create NR 205.07 (2) (g) and chapter NR 208, relating to compliance maintenance annual reports.

Submitted by Department of Natural Resources.

Report received from agency, October 24, 1986.

Referred to committee on Energy and Environmental Resources, October 29, 1986.

Clearinghouse Rule 86-117

AN ORDER to amend NR 25.03 (2) (a), (b) (intro.) and (c) (intro.); and to create NR 25.02 (23f), (23L), (23r), (23x), (27f), (27L), (27r) and (27x), 25.03 (2) (d), (e) and (f), 25.04 (7), 25.055 and 25.07 (2) (a) 3 d, relating to perch and whitefish fishing in Green Bay and Lake Michigan, commercial fishing licenses and transfer of commercial chub quotas.

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Referred to committee on Transportation, October 29, 1986.

Clearinghouse Rule 86-190

AN ORDER to amend Ins 17.25, relating to permitting the Wisconsin health care liability insurance plan to write professional liability insurance coverage for registered nurse midwives.

Submitted by Office of the Commissioner of Insurance.

Report received from agency, October 23, 1986.

Referred to committee on Labor, Business, Veterans Affairs and Insurance, October 29, 1986.

The committee on Transportation reports and recommends:

Clearinghouse Rule 86-166

AN ORDER to repeal Trans 200.06 (4) (b), (c) and (d) and (5) (d); to amend Trans 200.015 (2) (e) and 200.06 (1) (d), (f), (g), (h) and (k), (3) (f), (4) (a) and (5) (a); and to create Trans 200.06 (3) (i) and (12), relating to erection and maintenance of specific information and business signs within the limits of public highways.

Submitted by Department of Transportation.
No action taken.

Clearinghouse Rule 86-130

AN ORDER to amend Trans 276.07 (1), relating to the designation of additional highways to allow the operation of specified vehicles and combinations within certain length limitations.

Submitted by Department of Transportation.
No action taken.

Clearinghouse Rule 86-149

AN ORDER to repeal Hy 34.02 (1) Table and (2) (d), (e), (f), (g), (h) and (j); to renumber and amend Hy 34.01, 34.02 (1) (intro.), (2) (a), (b), (c) and (i), 34.03 and 34.04; and to create Trans 205.02 (intro.), (2), (5), (6), (8) and (9), relating to county trunk highway standards.

Submitted by Department of Transportation.
No action taken.

CARL OTTE
Chair