

Eighty-Ninth Regular Session

WEDNESDAY, November 29, 1989

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

INTRODUCTION OF BILLS

Read first time and referred:

Senate Bill 387

Relating to costs of maintaining prisoners in a county jail or house of correction.

By Senators Burke, Plewa and Czarnecki; cosponsored by Representatives Bock, R. Potter, Grobschmidt, Rosenzweig, Schneiders, Krusick, Krug and Carpenter.

To committee on Agriculture, Corrections, Health and Human Services.

Senate Bill 388

Relating to summary probate procedures.

By Senator Rude; cosponsored by Representatives Medinger and Roberts.

To committee on Judiciary and Consumer Affairs.

Senate Bill 389

Relating to including all excise taxes in the cost of doing business for purposes of the minimum markup.

By Senators Van Sistine and Roshell; cosponsored by Representative Wineke.

To committee on Labor, Business, Insurance, Veterans' and Military Affairs.

COMMITTEE REPORTS

The committee on Labor, Business, Insurance, Veterans' and Military Affairs reports and recommends:

Senate Bill 149

Relating to prohibiting municipalities from applying standards for certain multi-unit dwellings that do not conform to state standards.

Introduction and adoption of Senate substitute amendment 1:

Ayes, 6 -- Senators Van Sistine, Roshell, Kincaid, Plewa, Rude and Farrow;

Noes, 1 -- Senator Te Winkle.

Jerome Van Sistine
Chair

PETITIONS AND COMMUNICATIONS

State of Wisconsin
Department of Revenue

November 8, 1989

To the Honorable the Legislature:

Pursuant to Wisconsin Statutes sections 73.03(29) and (30) the Department of Revenue is required to collect information from individual income tax filers concerning the school district in which they resided

during the taxable year, and to notify the presiding officers of the houses of the legislature and the co-chairpersons of the Joint Committee on Finance of the results. Attached is a copy of the summary report covering tax year 1988.

Space was provided on all 1988 individual income tax returns for taxpayers to indicate the school district in which they resided by using a four-digit code. These codes conform with the codes used by the Department of Public Instruction. School district information was not requested on Homestead credit returns for 1988 unless the taxpayer also filed an individual income tax return. Nonresident individuals who filed Wisconsin income tax returns were directed not to complete the school district space.

Care should be exercised in using this data. Specifically, it should be noted that there are several problems inherent in the use of income tax data for measuring the ability to pay of school district property owners. First, the school district income information does not include the income of individuals who do not file tax returns because their income falls below the minimum filing requirements and because they do not have tax refunds.

Second, the income shown on the tax return excludes other sources of income that are either fully partially exempt from tax (e.g. social security, public assistance, unemployment compensation). Thus, the income data from tax returns provided for school districts understates the income of the districts.

Third, the income information does not include the income on nonresident property owners in the district, nor does it include the income of corporations located in the school district. Even though corporations and nonresident individuals may be paying property taxes to the communities in which their property is located, their income is not identified by the location of their property. Even if a corporation's income information were available by school district, determinations would still be required to apportion the income among the various states and districts in which the corporation may operate.

I urge you to keep these limitations in perspective when using this data.

Sincerely,
MARK D. BUGHER
Secretary

State of Wisconsin
Department of Health and Social Services

November 14, 1989

RE: Parole Board Report to Secretary of the Department of Health and Social Services for Fiscal Year 1989.

To the Honorable the Legislature:

JOURNAL OF THE SENATE [November 29, 1989]

Enclosed you will find a copy of the Parole Board Report for Fiscal Year 1989.

Sincerely,
 CHARLES E. KUEHN
 Chairman
 Parole Board

State of Wisconsin
 Office of the Commissioner of Insurance
 November 27, 1989

To the Honorable the Legislature:

SUBJECT: Health Insurance Social and Financial Impact Report

Required by s. 601.423, Wis. Stats.
 Senate Bill 87 and Assembly Bill 164

Enclosed is the social and financial impact report on **Senate Bill 87 and Assembly Bill 164.**

Sincerely,
 ROBERT D. HAASE
 Commissioner

State of Wisconsin
 Claims Board
 November 22, 1989

To the Honorable the Senate

Enclosed is the report of the State Claims Board covering claims heard on November 13, 1989.

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 November 13, 1989, upon the following claims:

Claimant	Amount
Unicare Homes, Inc.	\$4,992,000.00
Brandt Zynski	1,961.77
Charles Locker	11,243.75

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

Morgan Stenseth	740.44
LaVerne Wills	1,000.00

Karen Pike	40.00
John Rupp, Sr.	3,310.32
Cagney's, Inc.	15,404.00
Lorraine Goodwillie	508.91
James DeGroot	50.00
Farmers Grain and Supply	64.00
Lyman Lang	625.00
Shawn Wendling	45.00
David Zeug	54.12
Stephen and Jonel Mabie	1,110.98
Stephen Schram	220.00

THE BOARD FINDS:

1. Unicare Homes, Inc., of Milwaukee claims \$4,992,000.00 for an alleged underpayment by the Medicaid program because the Department of Health and Social Services, to close a loophole in the law, froze capital cost reimbursement at 1982 rates effective July 1, 1983, the day on which the claimant acquired 11 Wisconsin nursing homes and Unicare Health Facilities, Inc., acquired a twelfth Wisconsin nursing home. Claimant brought suit against the Department in federal court, challenging the 1983-84 reimbursement formula and seeking to invalidate the provision of the reimbursement formula that prohibited a capital cost increase for changes in ownership occurring after December 31, 1982. Claimant was unsuccessful in federal court. The Board concludes this claim should be denied and suggests the appropriate forum for the claimant would be the Circuit Court.

2. Brandt Zynski, of Waukesha claims \$1,961.77 plus interest, as a refund of income tax collected by the Department of Revenue from November, 1988 through May, 1989, by garnisheeing his wages. Claimant failed to file tax returns from 1981 to 1986. The Department of Revenue issued estimated assessments. After attempts by the department to obtain actual tax returns were ignored, on November 21, 1988, claimant's employer was notified to withhold 25% of claimant's wages until the tax delinquency was satisfied. In 1989, claimant filed tax returns for the years 1981 through 1986 and it was determined there were no outstanding liabilities. Because of the two-year statute of limitations, s. 71.75(5), Wis. Stats., the department is without authority to return any of the amount collected on the estimated assessments. 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. (Member Cogs dissenting).

3. Charles Locker, of Lockers, Inc., a retail florist in Wauwatosa and West Bend, claims \$11,243.75 plus interest, for refund of sales taxes incorrectly collected from its customers and remitted to the state during its fiscal years ending July 31, 1983 and 1984. In 1988, an accountant filed amended sales tax returns for the florist shop for fiscal years ending July 31, 1983 through July 31, 1988, requesting refund of \$34,236.56 for sales taxes

it had improperly charged to its customers on wire-in floral sales. At the time this refund was filed with the Department of Revenue, fiscal years 1983 and 1984 were closed to adjustment by a 4-year statute of limitations under s. 77.59, Stats. Refund requests for fiscal years ending July 31, 1985 through July 31, 1988, were verified by the department and allowed. The refund requests for 1983 (\$5,706.35) and 1984 (\$5,537.40) were denied. The audit findings, including denial of 1983 and 1984 refund claims were explained in a conference on March 27, 1989, with the claimant and his accountant. 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. (Member Coggs dissenting).

4. Morgan Stenseth, of Chippewa Falls claims \$740.44 for medical expenses allegedly resulting from the State Laboratory of Hygiene's negligence in not detecting Lyme's disease in a blood sample. In 1985, claimant was apparently bitten by a tick. Claimant's doctor diagnosed Lyme's disease based on a skin lesion and other physical symptoms and proceeded to treat claimant for the disease. In June and July, 1985 claimant's blood samples were tested by the state laboratory to confirm the physical diagnosis. Both tests were negative. In 1987, claimant was again diagnosed and treated successfully for Lyme's disease. Claimant was properly treated for his disease and his illness was in no way traceable or related to the tests performed by the State Laboratory of Hygiene. It is common for the test for Lyme's disease to produce a negative result for six weeks and longer after the initial infection, because the person infected must have developed antibodies to the disease in order for the test to produce serological evidence of infection. 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.

5. Laverne Wills, of Shullsburg claims \$1,000.00 for the loss of baby pigs which were euthanized and cremated at the Central Animal Health Laboratory in April, 1989, to prevent the spread of pseudorabies, an infectious disease of swine. Claimant purchased sows from a farmer in Grant County in April, 1989. The sows started to farrow and show clinical signs of pseudorabies and a diagnosis of pseudorabies was made. Under authority of s. 95.27(2), Stats. and s. Ag 10.57(4), Wis. Admin. Code, the Department of Agriculture, Trade and Consumer Protection condemned the pigs on April 28, 1989. The animals were located in an area otherwise free of this disease and the continued presence of the animals could have caused the spread of pseudorabies in the area surrounding claimant's farm. The Board concludes the claim should be paid in the amount of \$1,000.00, based on equitable principles. The Board further concludes

that, under the authority of s. 16.007(6m), Stats., payment should be made from the Department of Agriculture, Trade and Consumer Protection appropriation s. 20.115(2)(c), Stats.

6. Karen Pike, of Chaseburg claims \$40.00 as the replacement of cost of a coat allegedly stolen from a state vehicle while the vehicle was parked near a Department of Industry, Labor and Human Relations Petroleum Inspection Station in La Crosse from March 3-6, 1989. The vehicle was forcibly entered by an unknown person or persons while it was parked unattended over the weekend. 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. John C. Rupp, Sr., of Union Lake, Michigan claims \$3,310.32 as a refund of Wisconsin income tax erroneously withheld by his employer during 1982 and 1983. Claimant is a management consultant and a resident of Michigan. In 1982 and 1983, he did consulting work for a Chicago company at their divisions in California and Wisconsin. The income he earned in Wisconsin was excludable from Wisconsin gross income and his employer was not required to withhold Wisconsin income taxes on such earnings. The Department of Revenue did not refund the withheld tax because the claim was filed beyond the statute of limitations for refunds. The Board concludes there has been an insufficient showing of negligence on the part of the state, its agents, officers 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.

8. Cagney's, Inc., of Kenosha claims \$15,404.00 for the loss of business allegedly caused by road construction on Highway 31 in Kenosha during 1988. Claimant contends the construction completely closed the business for one month and caused a substantial decrease in business for three months due to poor access to the business location. The Department of Transportation alleges they executed this project as quickly as possible to minimize any disruption. The Board concludes that the unusual weight of the physical evidence establishes an equitable basis for payment of this claim in the reduced amount of \$2,000. The Board further concludes that, under the authority of s. 16.007(6m), Stats., payment should be made from the Department of Transportation appropriation s. 20.395(3)(cq), Stats.

9. Lorraine Goodwillie, of Manitowish Waters claims \$508.91 as the cost of repairing her vehicle allegedly damaged by stone chips on Highway 51 in the Manitowish Waters area after a seal coat had been applied to the highway in the summer of 1988. The work had been performed by a contractor as specified by the Department of Transportation. The stones clipped claimant's vehicle windshield and chipped paint on the

vehicle. The damage occurred after the advisory speed and loose gravel signs had been removed after construction. According to the Department of Transportation, this problem will be rectified in the upcoming construction season. The Board concludes the claim should be paid in the amount of \$508.91. The Board further concludes that, under the authority of s. 16.007(6m), Stats., payment should be made from the Department of Transportation appropriation s. 20.395(3)(cq), Stats.

10. James DeGroot, of Union Grove claims \$50.00 for damage to his vehicle, allegedly caused by a Southern Wisconsin Center resident who eloped from the center and smashed the back window of claimant's vehicle while it was parked at his residence on April 25, 1989. Claimant has received \$429.32 from his insurance company for the damage and the amount claimed is his insurance deductible. The Board concludes the claim should be paid in the amount of \$50, based on equitable principles. The Board further concludes that, under the authority of s. 16.007(6m), Stats., payment should be made from the Department of Health and Social Services appropriation s. 20.435(2)(gk), Stats.

11. Farmers Grain and Supply, of Union Grove Claims \$64.00 for damage to their vehicle, allegedly caused by a Southern Wisconsin Center resident who eloped from the center and smashed the vehicle headlights while the vehicle was parked at the driver's residence in Union Grove on April 25, 1989. The Board concludes the claim should be paid in the amount of \$64, based on equitable principles. The Board further concludes that, under the authority of s. 16.007(6m), Stats., payment should be made from the Department of Health and Social Services appropriation s. 20.435(2)(gk), Stats.

12. Lyman F. Lang, of Grantsburg claims \$600.00 as the replacement cost of his hearing aid, allegedly lost on April 13, 1989, while he was cutting timber for the Department of Natural Resources. Claimant is employed by the Department of Natural Resources and the loss occurred while he was operating a chain saw, clearing timber on a department project. The Board concludes the claim should be paid in the reduced amount of \$400, based on equitable principles. The Board further concludes that, under the authority of s. 16.007(6m), Stats., payment should be made from the Department of Natural Resources appropriation s. 20.370(1)(mu), Stats.

13. Shawn Wendling, of Eagle River, Alaska claims \$45.00 for replacement of his clothing allegedly damaged while he was camping at Devil's Lake State Park in Wisconsin on May 11-12, 1989. The clothing was stained with paint from a picnic table located at the campgrounds. The picnic table had been painted earlier in the week; however, conditions were such that the paint did not dry completely. The Board concludes the claim should be paid in the amount of \$45, based on equitable principles. The Board further concludes that, under the

authority of s. 16.007(6m), Stats., payment should be made from the Department of Natural Resources appropriation s. 20.370(1)(mu), Stats.

14. David J. Zeug, of Black River Falls claims \$54.12 as the replacement cost of a fishing tackle box and miscellaneous equipment allegedly stolen by an unknown person or persons while claimant was working in an undercover law enforcement capacity on a commercial fishing float. Claimant is employed by the Department of Natural Resources as a Conservation Warden Supervisor and he was requested to observe occupants of the float for fishing violations. Claimant was using his personal fishing equipment because department equipment was unavailable. The fishing equipment was needed to properly perform the undercover operation and was being used to facilitate a department function. The Board concludes the claim should be paid in the amount of \$54.12, based on equitable principles. The Board further concludes that, under the authority of s. 16.007(6m), Stats., payment should be made from the Department of Natural Resources appropriation s. 20.370(3)(mu), Stats.

15. Stephen and Jonel Mabie, of Hudson claims \$1,110.98 as the cost of reconstructing their well and for two well pumps. Claimants started having trouble with their well after the drawdown of the Mill Pond in St. Croix County in 1986. Mill Pond is an impoundment created by the Willow Falls dam, one of three dams owned and operated by the Department of Natural Resources in Willow River State Park. The drawdown was necessary to repair the dam. The impoundment created by the dam controls the water level of the water table and as a result of the reduction of the water table, repairs including removal of sand from the bottom of claimants' well were required to make the well functional. The Board concludes the claim should be paid in the reduced amount of \$475, based on equitable principles, i.e., \$231 for well set-up costs and \$244 for a pump. The Board further concludes that, under the authority of s. 16.007(6m), Stats., payment should be made from the Department of Natural Resources appropriation s. 20.370(1)(kb), Stats.

16. Stephen Schram, of Bayfield claims \$220.00 as payment for scuba diving services on June 25, 1988. On June 24, 1988, a boat ran into a Department of Natural Resources fish entrapment net located in Chequamegon Bay in Lake Superior. The accident involved a drowning fatality, which presently is the subject of a lawsuit brought by the widow of the deceased. The complainant, a department Fish Manager, enlisted the assistance of two deputies from Ashland County to dive for the boat in order to preserve it as evidence for possible court action and to quickly restore the nets and other gear to preserve the validity of the scientific fishery survey being conducted. 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 Department of Natural

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Resources appropriation s. 20.370(1)(mu), Stats., to the divers. Harlan Miller and John Felix.

THE BOARD CONCLUDES:

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

Unicare Homes, Inc.
Brandt Zynski
Charles Locker
Morgan Stenseth
Karen Pike
John Rupp, Sr.

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

LaVerne Wills	\$1,000.00
Cagney's Inc.	\$2,000.00
Lorraine Goodwillie	\$508.91
James DeGroot	\$50.00
Farmers Grain and Supply	\$64.00
Lyman Lang	\$400.00
Shawn Wendling	\$45.00
David Zeug	\$54.12
Stephen and Jonel Mabie	\$475.00
Harlan Miller and John Felix	\$220.00

Dated at Madison, Wisconsin this 21st day of November, 1989.

GARY R. GEORGE
Senate Finance Committee
MARCIA P. COGGS
Assembly Finance Committee
RAYMOND P. TAFFORA
Representative of Governor
EDWARD D. MAIN
Representative of Secretary of Administration
WILLIAM H. WILKER
Representative of Attorney General

State of Wisconsin
Office of the Secretary of State
November 24, 1989

To the Honorable the Senate

I have the honor to transmit to you the following information pursuant to s. 13.685(7).

If you have any questions concerning this transmittal, please contact Teresa Walker, Lobbyist Specialist, at (608) 266-5503.

NEWLY REGISTERED LOBBYISTS AND THEIR PRINCIPALS:

Anthony S. Earl November 22, 1989, 1 S. Pinckney St., Madison WI 53701; (608) 251-5000.

1) **Procter & Gamble Co.** Lavatus V. Powell, Asso. Dir.; 1 Procter & Gamble Plaza, Cincinnati OH 45202; (513)983-4845.

Subjects: Environmental and taxation issues.

Nancy A. Irving November 20, 1989, 1330 N. 113th St., Ste. 190, Milwaukee WI 53226; (414)258-9100.

1) **American Lung Assn. of WI** Mark Huber; 1330 N. 113th St., Ste. 190, Milwaukee WI 53226; (414)258-9100.

Subjects: Health, smoking, taxation, regulation of tobacco products.

Walter R. Stewart November 21, 1989, 217 S. Hamilton, Ste. 401, Madison WI 53703; (608)256-7902.

1) **WI Restaurant Assn.** Ed Lump; 125 W. Doty St., Madison WI 53703; (608)251-3663.

Subjects: Food service and hospitality industry.

TERMINATION OF LOBBYIST LICENSES:

Michael H. Dunham terminated as of November 24, 1989 for **WI Optometric Assn.**

TERMINATION OF PRINCIPALS:

Labor Assn. of WI, Inc. terminated as of November 20, 1989.

AMENDMENT TO PRINCIPAL INFORMATION:

PRINCIPAL: Waste Management of WI, Inc.
NEW ADDRESS: 10850 W. Park Pl., Milwaukee WI 53224

DATE: November 21, 1989

Sincerely,
DOUGLAS LAFOLLETTE
Secretary of State

SENATE CLEARINGHOUSE ORDERS

Senate Clearinghouse Rule 89-124

Relating to participation of aid to families with dependent children recipients in the job opportunities and basic skills training program.

Submitted by Department of Health and Social Services.

Report received from agency, November 22, 1989.

Referred to committee on Agriculture, Corrections, Health and Human Services, November 29, 1989.

Senate Clearinghouse Rule 89-140

Relating to the operation of 'double bottoms' and certain other combination vehicles greater than 60 feet in overall length on the specified highway or highways between STH 11 near Brodhead and IH 90 near Beloit.

Submitted by Department of Transportation.

Report received from agency, November 28, 1989.

Referred to committee on Transportation, Conservation and Mining, November 29, 1989.

The committee on Judiciary and Consumer Affairs reports and recommends:

Senate Clearinghouse Rule 89-88

Relating to telephone utilities to provide single-party revertive calling capability.

No action taken.

Lynn S. Adelman
Chair

The committee on Labor, Business, Insurance, Veterans' and Military Affairs reports and recommends:

Senate Clearinghouse Rule 89-106

Relating to the standards for disability insurance sold to the Medicare eligible.

No action taken.

Jerome Van Sistine
Chair

The committee on Urban Affairs, Environmental Resources, Utilities and Elections reports and recommends:

Senate Clearinghouse Rule 89-139

Relating to facilities housing hazardous chemicals.

No action taken.

Fred A. Risser
Chair

The committee on Agriculture, Corrections, Health and Human Services reports and recommends:

Senate Clearinghouse Rule 89-93

Relating to the use of chemical agents on inmates of adult correctional institutions to enforce orders.

No action taken.

Senate Clearinghouse Rule 88-198

Relating to the design, construction and security of municipal lockup facilities.

No action taken.

Senate Clearinghouse Rule 87-65

Relating to loans for inmates of adult correctional institutions to pay for photocopying, postage and supplies related to their legal correspondence.

No action taken.

Senate Clearinghouse Rule 89-14

Relating to restaurants.

No action taken.

Senate Clearinghouse Rule 89-18

Relating to local rabies control programs.

No action taken.

Senate Clearinghouse Rule 89-61

Relating to coverage of dental services under medical assistance.

No action taken.

Rodney C. Moe
Chair