

STATE OF WISCONSIN
Senate Journal
Ninety–Third Regular Session

WEDNESDAY, May 7, 1997

The Chief Clerk makes the following entries under the above date.

INTRODUCTION AND REFERENCE OF RESOLUTIONS AND JOINT RESOLUTIONS

Read and referred:

Senate Joint Resolution 21

Relating to: urging mitigation of economic warfare among the states.

By Senators Chvala, Plache, Burke, C. Potter, Moen and Wineke; cosponsored by Representatives Bock, Black, Hanson, Meyer, Dobyms, Turner, Huber, Ryba, Otte, R. Young, Baumgart, J. Lehman, Riley, Hasenohrl, Gronemus, L. Young, Plouff, Baldwin, Notestein, Robson, Springer and Staskunas.

To committee on **Economic Development, Housing and Government Operations**.

INTRODUCTION, FIRST READING AND REFERENCE OF BILLS

Read first time and referred:

Senate Bill 194

Relating to: required emissions inspections of motor vehicles transferred to surviving spouses.

By Senators C. Potter, Grobschmidt, Huelsman, Panzer, A. Lasee, Farrow and Zien; cosponsored by Representatives Otte, Duff, Bock, Gronemus, Ziegelbauer, Krug, Baumgart, Jeskewitz, Albers, Grothman, M. Lehman, Zukowski, Owens, Ryba, Goetsch, Ladwig, Nass, Seratti, Plale, Musser, Ainsworth, Olsen, Sykora and Brandemuehl.

To committee on **Labor, Transportation and Financial Institutions**.

Senate Bill 195

Relating to: rights of victims of crime, granting rule-making authority and providing a penalty.

By Senators Moore, Huelsman, Adelman, Plache, Welch, C. Potter, Wirch, Rosenzweig, Moen, Grobschmidt, Drzewiecki and Roessler; cosponsored by Representatives Krug, Green, Rutkowski, Duff, R. Potter, Schneider, Brandemuehl, Baumgart, Dobyms, Black, Freese, Boyle, Hahn, Carpenter, Harsdorf, Coggs, Seratti, Hanson, Sykora, Hasenohrl, Underheim, Ryba, Walker, Springer, Travis, Huebsch, Turner, Vander Loop, Hutchison, Wasserman, Kelso, L. Young, Ladwig, Ziegelbauer, F. Lasee, Hebl, Lazich, Huber, J. Lehman, Kreuser, M. Lehman, La Fave, Lorge, Meyer, Musser, Morris–Tatum, Olsen, Notestein, Plale, Ourada, Plouff, Porter, Riley, Robson, Albers and Bock, by request of Attorney General Jim Doyle; Crime Victims Council; Wisconsin Coalition Against Sexual Assault; Parents of

Murdered Children; Mothers Against Drunk Driving; Wisconsin Chiefs of Police Association; Wisconsin Victim/Witness Professionals Association; Coalition of Wisconsin Aging Groups; Wisconsin Merchants Federation; AFSCME, Locals 3021 and 3394 (Correctional Officers).

To committee on **Judiciary, Campaign Finance Reform and Consumer Affairs**.

Senate Bill 196

Relating to: abandonment of a child and providing a penalty.

By Senators Breske, Roessler and A. Lasee; cosponsored by Representatives Ourada, Goetsch, Hahn, Vander Loop, Ryba, Plale and Seratti.

To committee on **Judiciary, Campaign Finance Reform and Consumer Affairs**.

Senate Bill 197

Relating to: mental health treatment of minors

By Senators Rosenzweig, Huelsman, Roessler, Panzer, Farrow, Zien, Schultz and Drzewiecki; cosponsored by Representatives Gard, Walker, Albers, Brandemuehl, Ainsworth, Ziegelbauer, Powers, Lazich, F. Lasee, Musser, M. Lehman, Ladwig, Harsdorf, Goetsch, Gunderson, Schafer, Ott, Hahn, Owens, Huebsch and Sykora.

To committee on **Health, Human Services, Aging, Corrections, Veterans and Military Affairs**.

Senate Bill 198

Relating to: the presence of alcohol in the body of an underage person.

By Senator Moen, by request of James Duvall, Buffalo County District Attorney).

To committee on **Judiciary, Campaign Finance Reform and Consumer Affairs**.

Senate Bill 199

Relating to: the elimination of the state lottery and pari-mutuel wagering, prohibiting new claims under the farmland relief tax credit, providing a penalty and making an appropriation.

By Senators Risser and Welch; cosponsored by Representatives La Fave, Grothman, Huebsch, Plouff, R. Young, F. Lasee and Baldwin.

To committee on **Judiciary, Campaign Finance Reform and Consumer Affairs**.

Senate Bill 200

Relating to: stationery utilized by state agencies for outside correspondence.

By Senators Risser, Moen, Cowles, Plache, Schultz, Rude, Roessler, Huelsman and Wirch; cosponsored by Representatives Goetsch, Baumgart, Robson, Notestein, Ryba, Ladwig, Lorge, Boyle, Kreuser, L. Young, Vander Loop, Kedzie, Grothman, Gunderson, Huber, Kaufert, Hahn, Kelso, Plale and Baldwin.

To committee on **Economic Development, Housing and Government Operations.**

Senate Bill 201

Relating to: "sale or return" or consignment sales under the uniform commercial code.

By Senators Chvala, Wineke, C. Potter and Moen; cosponsored by Representatives Robson, Grothman, Freese, Hasenohrl, Lorge, Plouff and Black.

To committee on **Judiciary, Campaign Finance Reform and Consumer Affairs.**

REPORT OF COMMITTEES

The committee on **Education** reports and recommends:

Senate Bill 25

Relating to: the school aid distribution schedule.

Introduction and adoption of Senate substitute amendment 1.

Ayes, 7 – Senators C. Potter, Jauch, Shibilski, Grobschmidt, Darling, Huelsman and Roessler.
Noes, 0 – None.

Passage as amended.

Ayes, 7 – Senators C. Potter, Jauch, Shibilski, Grobschmidt, Darling, Huelsman and Roessler.
Noes, 0 – None.

Senate Bill 50

Relating to: increasing a school district's revenue limit for certain technology-related expenditures.

Passage.

Ayes, 4 – Senators C. Potter, Jauch, Shibilski and Grobschmidt.
Noes, 3 – Senators Darling, Huelsman and Roessler.

Senate Bill 102

Relating to: the use of school district property by citizen associations.

Passage.

Ayes, 7 – Senators C. Potter, Jauch, Shibilski, Grobschmidt, Darling, Huelsman and Roessler.
Noes, 0 – None.

Senate Bill 107

Relating to: the term of the student member of the state technical college board.

Passage.

Ayes, 7 – Senators C. Potter, Jauch, Shibilski, Grobschmidt, Darling, Huelsman and Roessler.
Noes, 0 – None.

Senate Bill 120

Relating to: adjusting a school district's revenue limit upon the transfer of services.

Passage.

Ayes, 7 – Senators C. Potter, Jauch, Shibilski, Grobschmidt, Darling, Huelsman and Roessler.
Noes, 0 – None.

Senate Bill 123

Relating to: notification of a juvenile's school if a juvenile delinquency proceeding is terminated without a finding that the juvenile has committed a delinquent act.

Passage.

Ayes, 7 – Senators C. Potter, Jauch, Shibilski, Grobschmidt, Darling, Huelsman and Roessler.
Noes, 0 – None.

Calvin Potter
Chairperson

The committee on **Health, Human Services, Aging, Corrections, Veterans and Military Affairs** reports and recommends:

BANCROFT, REBECCA G., of Pewaukee, as a member of the Council on Domestic Abuse, to serve for the term ending July 1, 1999.

Confirmation.

Ayes, 6 – Senators Moen, Breske, Moore, Wirch, Rosenzweig and Fitzgerald.
Noes, 0 – None.

DAVIS, YVONNE J., of Milwaukee, as member of the Barbering and Cosmetology Examining Board, to serve for the term ending July 1, 2000.

Confirmation.

Ayes, 6 – Senators Moen, Breske, Moore, Wirch, Rosenzweig and Fitzgerald.
Noes, 0 – None.

KOHLER, NATALIE BLACK, of Oostburg, as a member of the Board of Trustees of the Medical College of Wisconsin, Inc., to serve for the interim term ending May 1, 1997 and for a full term ending May 1, 2003.

Confirmation.

Ayes, 6 – Senators Moen, Breske, Moore, Wirch, Rosenzweig and Fitzgerald.
Noes, 0 – None.

VUE, MAI ZONG, of Madison, as a member of the Council on Domestic Abuse, to serve for the interim term ending July 1, 1998.

Confirmation.

Ayes, 6 – Senators Moen, Breske, Moore, Wirch, Rosenzweig and Fitzgerald.
Noes, 0 – None.

Assembly Bill 186

Relating to: notification of the general public concerning sex offenders.

Introduction and adoption of Senate amendment 1.

Ayes, 6 – Senators Moen, Breske, Moore, Wirch, Rosenzweig and Fitzgerald.
Noes, 0 – None.

Concurrence as amended.

Ayes, 6 – Senators Moen, Breske, Moore, Wirch, Rosenzweig and Fitzgerald.
Noes, 0 – None.

Senate Bill 1

Relating to: spousal impoverishment under the medical assistance program.

Passage.

Ayes, 5 – Senators Moen, Breske, Moore, Wirch and Rosenzweig.

Noes, 1 – Senator Fitzgerald.

Senate Bill 99

Relating to: requiring insurance coverage of preventive pediatric health care services.

Introduction and adoption of Senate amendment 1.

Ayes, 6 – Senators Moen, Breske, Moore, Wirch, Rosenzweig and Fitzgerald.

Noes, 0 – None.

Passage as amended.

Ayes, 5 – Senators Moen, Moore, Wirch, Rosenzweig and Fitzgerald.

Noes, 1 – Senator Breske.

Senate Bill 117

Relating to: interest and penalty waivers for certain payments made to national guard technicians.

Passage.

Ayes, 6 – Senators Moen, Breske, Moore, Wirch, Rosenzweig and Fitzgerald.

Noes, 0 – None.

Senate Bill 145

Relating to: increasing the limits, and authorizing occurrence or claims-made coverage, for health care liability insurance and granting rule-making authority.

Passage.

Ayes, 6 – Senators Moen, Breske, Moore, Wirch, Rosenzweig and Fitzgerald.

Noes, 0 – None.

Senate Bill 153

Relating to: changing the term “assisted living facility” to “residential care apartments” and defining the term “stove” for the purposes of residential care apartments.

Introduction and adoption of Senate substitute amendment 1.

Ayes, 6 – Senators Moen, Breske, Moore, Wirch, Rosenzweig and Fitzgerald.

Noes, 0 – None.

Passage as amended.

Ayes, 6 – Senators Moen, Breske, Moore, Wirch, Rosenzweig and Fitzgerald.

Noes, 0 – None.

Senate Bill 155

Relating to: bonding authority of the Wisconsin Health and Educational Facilities Authority.

Passage.

Ayes, 5 – Senators Moen, Breske, Moore, Rosenzweig and Fitzgerald.

Noes, 1 – Senator Wirch.

Senate Bill 156

Relating to: regulation of physician assistants and the authority of physician assistants to prescribe drugs and devices.

Passage.

Ayes, 6 – Senators Moen, Breske, Moore, Wirch, Rosenzweig and Fitzgerald.

Noes, 0 – None.

Rodney Moen
Chairperson

PETITIONS AND COMMUNICATIONS

Senate Petition 5

A petition in the form of a resolution by the Rock County Board of Supervisors in support of an increase in the foster care reimbursement rate in the Wisconsin State budget.

By Senator Burke.

To joint committee on **Finance**.

**State of Wisconsin
Office of the Secretary of State**

To the Honorable, the Senate:

<u>Bill, Joint Reso- lution or Resolu- tion Number</u>	<u>Act Number or En- rolled Number</u>	<u>Publication Date</u>
Senate Bill 68	Wisconsin Act 3	May 12, 1997
Senate Bill 113	Wisconsin Act 4	May 12, 1997
Senate Bill 76	Wisconsin Act 5	May 12, 1997

Sincerely,
DOUGLAS LA FOLLETTE
Secretary of State

**State of Wisconsin
Claims Board**

May 1, 1997

The Honorable, The Senate:

Enclosed is the report of the State Claims Board covering the claims heard on April 11, 1997.

The amounts recommended for payment under \$5,000 on claims included in this report have, under the provisions of s. 16.007. Stats., been paid directly by the Board.

The Board is preparing the bill(s) on the recommended award(s) over \$5,000, if any, 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 119 Martin Luther King Jr., Blvd., Madison, Wisconsin on April 11, 1997, upon the following claims:

<u>Claimant</u>	<u>Amount</u>
1. Irene D. Brown	\$927,232.46
2. Violet Thompson	\$1,768.77
3. Ralph & Caroline Kobb	\$13,580.38
4. Jerome L. Teeters	\$1,268.72
5. Kenosha County	\$334,031.66
6. Waushara County	\$61,963.42

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

7. Bradley Copeland	\$863.46
8. Jennifer Sargent	\$220.00
9. Sarah Gallow–Czarnecki	\$925.48
10. Matthew Steffens	\$748.66
11. Sandra & Brian Swanson	\$2,500.00
12. Robert G. Wojcik, Sr	\$285.00
13. Antion Delarosa	\$63.96
14. Terry Holloway	\$309.20
15. Joyce M. Uhren	\$50.00
16. Raymond Collins	\$1,743.00
17. Tammy M. Leinen	\$360.47
18. Michael A. Stach	\$4,121.00
19. Clyde H. Lockard	\$396.19

In addition, a request for re–hearing was considered and decided without hearing for the following claim:

20. Robert & Suzanne Saletra	\$10,426.14
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The Board Finds:

1. Irene Brown of New Berlin, Wisconsin, claims \$927,232.46 for damages related to the payout procedure for a Wisconsin’s Very Own Megabucks (WVOM) jackpot prize. The claimant wishes to be paid in 25 monthly rather than annual installments. All of the promotional and informational material available to the claimant stated that the jackpot payment would be made in “25 installments.” None of that material, including the ticket itself, disclosed that the installments were annual. The claimant had no knowledge of the existence of the “Features and Procedures” document, which does refer to annual installments, and none of the promotional and informational material available to the claimant disclosed the existence of this document. Furthermore, the “On–Line Game Guide,” which also references annual payments, was not available at the point of purchase as stated by the Department of Revenue. The claimant did not know that the On–Line Game Guide existed until she went to redeem her winning ticket at the Lottery office in Milwaukee and was given a copy of the Guide. The claimant believes that she has been a victim of deceptive advertising and a classic bait–and–switch scheme. All of the information available to her at the time she purchased the WVOM ticket led her to believe that a winning jackpot prize could be paid over any installment term, such as 25 months. The claimant believes that a prize payment of 25 annual installments would be a breach of contract. She further claims that the Lottery’s failure to adequately disclose that payments were annual is a violation of s. 565.30 (2m), Stats., which requires the “number of years over which the prize shall be paid” to be stated on any informational material. The claimant requests compensation for her damages; the difference between the value of the jackpot as paid over 25 months rather than 25 years. The Lottery contends it has met the requirements of s. 565.30 (2m), which requires that informational material state the number of installments “if the prize...is payable in installments over a period of years.” Therefore, the lottery is only required to publish the number of installments if the prize is paid in annual payments. The Lottery recommends denial of this claim. 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.

2. Violet Thompson of Milwaukee, Wisconsin, claims \$1,768.77 for lost property and car damage due to two incidents of vandalism and theft. The claimant is employed by the Department of Workforce Development at the Central City Initiative employment office in Milwaukee. In March 1996

someone entered her office, stole her car keys from her coat pocket and took items from her car. In July 1996 her car was vandalized, the window broken and items stolen from the car. In both instances the car was parked in the parking lot at her office. The claimant’s total damages for lost property, car repair and car rental come to \$7,681.60. Her insurance covered \$5,912.83, leaving an uninsured balance of \$1,768.77. The claimant did not file a claim with her homeowner’s insurance. The department recommends denial of this claim due to the fact that the claimant’s losses were caused by the criminal actions of third parties. 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. Ralph and Caroline Kobb of Oak Creek, Wisconsin, claim \$13,580.38 for refund of money seized by the Department of Revenue for nonpayment of 1989 income taxes. To the best of their knowledge, the claimants did file a 1989 state income tax return. They have never failed to file tax returns either before 1989 or since. The claimants’ personal financial records for 1989 have been misplaced due to a family tragedy. The claimants’ son was seriously injured in an automobile accident and required constant care while recuperating at home from January to October 1990. This incident disrupted the claimants’ usually careful record keeping and resulted in the misplacement of their financial records. In June 1995 the DOR seized \$15,139.47 for payment of the 1989 estimated assessment. The claimants filed another 1989 return in February 1996. This return showed a tax obligation of \$4,669.04 of which \$3,109.95 had been paid through payment withholding, leaving a balance of \$1,559.09. The claimants believe that it is unconscionable for the DOR to seize \$15,139.47 for a debt of \$1,559.09. The claimants request a refund of the \$13,580.38 overpayment, plus interest from the date of seizure, June 26, 1995. The department recommends denial of this claim. The claimants failed to respond to the department’s request to file the return. The DOR had 16 contacts with the claimants or their attorney attempting to resolve the matter without success. 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.

4. Jerome L. Teeters of Two Harbors, Minnesota, claims \$1,268.72 for money garnished from the his wages for a delinquent income tax assessment. The claimant asserts that he did not owe the state any taxes and that his returns had been filed on time and were not subject to any penalty. The claimant tried for a number of years to straighten out the situation and finally was able to prove to the department that he did not owe any tax. By that time, the department had issued an estimated assessment of \$35,644.64 and garnished \$1,268.72 from the claimant’s wages. The claimant was notified in March 1995 that he would not be able to obtain a refund of the garnished amount because of the statute of limitations. The department recommends denial of this claim. The claimant’s payment for his 1984 return was returned NSF and he also had a number of outstanding sales tax liabilities for 1985. The department attempted to resolve the delinquent account for seven years without success because the claimant refused to file the requested residency information. It was not until the department began garnishment that the claimant submitted the necessary documents. 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. Kenosha County, Wisconsin, claims \$334,031.66 for unreimbursed operating costs for the County's assessment system. In 1972, Kenosha County created a county assessor system as authorized under then section 70.99 (12) of the Wisconsin Statutes. In adopting this system, the county relied upon those provisions of s. 70.99 (12), Stats., which provided for partial reimbursement of operating costs to any county adopting a county-wide assessing system. Kenosha County relied upon the state's assurances over the years that such reimbursement would continue at substantially the level that had been set in 1972. There were no substantial changes in the reimbursement formula from 1972 to 1994. Reimbursements to the county on claims for such operational costs were for costs that had been incurred in the calendar year prior to the date that the claim was made. In the 1995 Budget Bill, the legislature changed the law and drastically reduced funding for reimbursement effective July 2, 1996. The new formula provided for reimbursement equal to 50% of the prior level. In response to the funding reduction, Kenosha County dissolved its county-wide assessment system, effective January 1, 1996. The county then filed a claim for \$668,063.32, for costs incurred in 1995, prior to the effective date of the new law. The Department of Revenue paid the county \$334,031.66 and denied the remainder of the claim. Kenosha County maintains that the change in the law did not take effect until July 2, 1996, a full year after its passage and, therefore, the county is entitled to reimbursement of its operating costs as set forth under the old formula. The law was changed after Kenosha County had appropriated, expended and/or committed money in reliance on the law that existed and was in effect as of January 1, 1995. Furthermore, the county could not cut off funding for, or dissolve, county assessing in mid-year. The county requests the unreimbursed portion of their 1995 operating costs: \$334,031.66. The Department of Revenue recommends denial of this claim. The department did considerable research, with the assistance of State Budget office personnel, and concluded that the state was only obligated to pay the county 50%. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees 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 Main not participating.)

6. Waushara County, Wisconsin, claims \$61,963.42 for reimbursement of local transportation aid payments withheld by the Department of Transportation to cover cost overruns on a highway construction project. The county believes the department wrongfully approved payment to private contractors for highway construction costs and overruns not within the terms of the construction contract or change orders. Waushara County claims it is only obligated to pay 20% of the construction contract price and that any payment over and above the contract price is prohibited by law. The DOT has stated that the county must also pay 20% of the extra costs: \$61,963.42. The department has withheld a portion of Waushara County's local transportation aid payments to cover this amount. Waushara County believes any extra payment to contractors is prohibited by state law and requests reimbursement of the amount withheld from the county's local transportation aid payments. The Department of Transportation recommends denial of this claim. The department denies that it paid any extra compensation to contractors and states that the county agreed to pay the state all costs of the project which "exceed Federal/State financing commitments..." The department does not have the statutory authority to use state funds to pay the county's share and therefore withheld local aid payments to cover the amount owed by the county. The Board concludes there has been an insufficient showing of negligence on the part of the state, its

officers, agents or employees 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. Bradley Copeland of Highland Park, Illinois, claims \$863.46 for medical bills and related expenses incurred as a result of an injury he received while participating in a UW Kendo class. Kendo is a form of Japanese swordsmanship which involves the use of the Kendo stick (*shinai*), which is made out of bamboo. The claimant believed the class was safe because the syllabus indicated that no one had ever been seriously injured while participating in class exercises. However, the claimant was accidentally struck in the hand in an area with insufficient padding. His hand was broken and he later required surgery. Without surgery, his hand would not have healed properly. The claimant requests reimbursement of his unpaid medical costs and the hotel expenses incurred by his parents when they came to visit him when he had his surgery. The University of Wisconsin recommends denial of this claim because the claimant's injury was not caused by the negligence of a state employee. Furthermore, prior to participating in the class, the claimant signed a statement which reads in part: "Any costs as the result of injury or illness connected with participation in these courses are solely the responsibility of the student." The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees 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. Jennifer Sargent of Charlotte, North Carolina, claims \$220.00 for damage to scuba equipment which occurred during a UW course field trip. The claimant was a student in the class Zoology/Botany 460. Participation in the course included a field trip to Florida. Among other activities, students on the trip went SCUBA diving. The claimant brought SCUBA equipment, consisting of a new regulator rented from the Hoofers Club and a diving bag. On January 11, 1996, in preparation for a diving trip, the claimant placed her equipment behind the UW vehicle designated to take the students to the diving site. It was the usual practice to leave the diving equipment behind the vehicle for loading. The UW's authorized driver backed the UW van over the equipment, damaging the bag and the regulator. Both items were a total loss. The UW driver assured the claimant that he would take care of filing with UW Risk Management. In April, the claimant called Risk Management and was told the driver had never filed a claim. The claimant gave the information to a student hourly, who said she would follow up on the incident. The claimant did not hear anything and again called Risk Management in May. The student hourly who had been working on the case was not there and no file could be found. The claimant was then told that she could not file a claim because it had been over 120 days since the incident. The claimant requests \$70.00 for replacement of the damaged dive bag, which was her personal property, and \$150 for the damaged regulator. The regulator belonged to the Hoofers Club and the claimant has submitted a receipt showing that she paid them \$150 to replace the regulator. The University of Wisconsin recommends payment of this claim. The Board concludes the claim should be paid in the amount of \$220.00 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.

9. Sarah Gallow-Czarnecki of Milwaukee, Wisconsin, claims \$925.48 for car damage allegedly caused by a malfunctioning traffic gate. On October 19, 1995, the claimant was traveling on the 68th Street on-ramp to I-94 in Milwaukee. The claimant states there were no visible "closed" signs posted

at the on-ramp and that she was one of many cars lined up to enter the ramp. The traffic gate rose and the claimant proceeded forward. As she passed under the gate, it abruptly lowered onto her car, damaging her hood and side mirror. The claimant believes the ramp should have been closed until repairs were made since the Department of Transportation knew the gate was not functioning properly. The claimant has received two estimates for repairing her vehicle, one for \$925.48 and one for \$1187.95. The claimant does not have insurance coverage for this damage. The department recommends denial of this claim due to the fact that the ramp was posted as "closed" during the time the claimant was using it. The gate arm is often damaged by motorists attempting to go around it when the ramp is closed. 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.

10. Matthew Steffens of Oconto Falls, Wisconsin, claims \$748.66 for medical bills and lost wages related to an accident at the Green Bay Department of Motor Vehicles on January 26, 1996. The claimant was leaving the DMV when he slipped and fell on the icy sidewalk outside the building, dislocating his shoulder. The claimant incurred uninsured medical bills and was not able to work for a week. The claimant believes the sidewalk outside the building was not properly shoveled. He requests \$236.50 for medical expenses and \$512.16 for one week's lost wages. The department recommends denial of this claim. Department personnel had been shoveling and salting the walkway throughout the day. Two DMV employes who witnessed the claimant's fall stated that the snow accumulation on the sidewalk was minimal at the time of the accident. 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. Sandra Swanson of St. Paul, Minnesota, on behalf of her son Brian Swanson, claims \$2,500.00 for lost personal property. In September 1993 the claimant's son was arrested. At the time of his arrest, all of his personal property, which was in his vehicle, was impounded by the Wisconsin State Patrol. The claimant and her son were informed by both the State Patrol and the St. Croix County Sheriff's Department that the property could not be released until the investigation regarding Brian's arrest was completed. Charges were filed against Brian in 1995 and the case was scheduled to be heard in 1996. The claimant contacted Trooper Lewis to confirm the property was still being held and he assured her that it was. She made arrangements to pick up her son's property on March 19, 1996. On the morning of March 19, she received a phone call stating that Trooper Lewis would not be at work that day but would call the claimant to reschedule the meeting. The claimant never received a call from Trooper Lewis despite repeated attempts to reach him. The claimant then contacted Sergeant Erickson, who on April 23, 1996, told her she could come pick up her son's birth certificate and papers. When she inquired as to the rest of the property, he informed her that everything else had been thrown out sometime in October 1995. Neither the claimant nor her son had authorized disposal of the impounded property. To the contrary, they had been in constant contact with the State Patrol in order to assure the property was returned. The lost property included a large amount of clothing, including a leather jacket (\$259), a pair of hand-tooled western boots with silver spurs (\$480), and a custom made Stetson (\$310). Also impounded were a number of power tools and personal photographs. The claimant, on behalf of her son,

requests reimbursement for the lost items. The department recommends payment of the claim in the reduced amount of \$1,403.25. The department has subtracted the claimed value of the custom Stetson, leather jacket and silver spurs because it finds no evidence of these items in either the inventory or photographs. The department also deducted 25% depreciation due to the age and condition of the items. The Board concludes the claim should be paid in the reduced amount of \$1,000.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Transportation appropriation s. 20.395 (5)(dq), Stats.

12. Robert G. Wojcik, Sr., of Green Bay, Wisconsin, claims \$285.00 for replacement of a watch lost due to the negligence of a Wisconsin State Trooper. On September 18, 1996, the claimant was arrested for operating a vehicle while intoxicated. The arresting trooper instructed the claimant to remove his watch and place it on the hood of the patrol car so that the trooper could handcuff him. The trooper apparently forgot to remove the claimant's watch from the hood of the car when he left the scene. The claimant alleges that his watch was a Rolex and that the damaged Timex later retrieved from the scene of the arrest is not his watch. He states that he received the watch as a gift and therefore does not have a receipt to show the original purchase price. The department recommends denial of this claim based on the fact that the claimant's watch, which was later recovered, was a Timex worth approximately \$30. 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.

13. Antion Delarosa of Plymouth, Wisconsin, claims \$63.96 for money allegedly stolen from the his inmate account at Kettle Moraine Correctional Institution (KMCI). The claimant was transferred from one unit to another on July 23. On July 25, KMCI staff handed out the inmates canteen statements, however, the claimant's statement was missing. On August 1 the claimant received his monthly transaction statement showing \$63.96 in canteen purchases which he allegedly did not make. The claimant believes someone stole his canteen statement and forged his signature to make the purchases. He requests reimbursement for the amount of the purchases. The department recommends denial of this claim due to the fact that the signature on the canteen statement appears to be the claimant's. Furthermore, the department is not responsible for property loss or damage caused by another inmate. 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. Terry Holloway of Oregon, Wisconsin, claims \$ 309.20 for property allegedly lost when the he was transferred from the John Burke Correctional Center to Fox Lake Correctional Institution. The claimant requests reimbursement for the following items: 1 pair Nike tennis shoes (\$150), 7 cassette tapes (\$70), 1 T-shirt (\$12), 1 photo album (\$10), 60 family photographs (\$60), and 1 leather key chain (\$7.20). The department recommends denial of this claim. Department staff packed the claimant's belongings before transfer and the property inventory indicates that he received his property. Any items the claimant did not receive were most likely loaned to other inmates in violation of policy. 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.

15. Joyce M. Uhren of Hawkins, Wisconsin, claims \$50.00 for vehicle damage related to the attempted theft of the claimant's vehicle from the parking lot at Flambeau Correctional Center where the claimant is employed. The vehicle's rear window was broken and the steering column and ignition damaged by an inmate attempting to steal the vehicle. The claimant requests reimbursement of her \$50 insurance deductible. The department recommends payment of the claim. The Board concludes the claim should be paid in the amount of \$50 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Corrections appropriation s. 20.410 (1)(a), Stats.

16. Raymond Collins of Waupun, Wisconsin, claims \$1,743.00 for property allegedly lost by Department of Corrections personnel. The claimant is an inmate at Waupun Correctional Institution (WCI). He alleges that he had 14 bags of property stored in the property room at WCI and that the property was "stolen, sabotaged and missing" when he went to retrieve it. He also claims that all of his receipts for his property were in the bags and are therefore also missing. He believes the officers in charge of the property room destroyed his property because they are racist and that they also falsified his property inventory forms. The department recommends denial of this claim based on the fact that the property inventory documents indicate that the claimant had considerably less than 14 bags of property. The claimant routinely refuses to sign property inventory documents and then claims the documents are incorrect. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees 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. Tammy M. Leinen of Tigerton, Wisconsin, claims \$360.47 for medical bills incurred due to an accident at Rib Mountain State Park. On October 5, 1996, the claimant was walking on the asphalt pathway leading from the park's observation tower, when her foot slipped off the edge of the path, twisting her ankle and causing her to fall. A bystander went to the concession stand and brought back some ice. The claimant waited for assistance, however, after 45 minutes no park personnel had arrived so the claimant's mother went to the concession stand and again requested assistance. Because the claimant was in pain, they decided not to wait for park staff, but instead carried the claimant to the car and drove back down the mountain. They passed a park vehicle on the way down but were unable to get the ranger's attention. The claimant suffered a torn ligament in her ankle and had to wear a brace for 3 weeks. She believes the edge of the asphalt pathway should have been back-filled instead of dropping off sharply. The claimant does not have insurance coverage for her medical bills. The department recommends denial of this claim based on s. 895.52, Stats., which provides that the state has no liability to persons engaged in recreational activities in state parks in the absence of a malicious act or failure to warn against known unsafe conditions. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees 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. Michael A. Stach of Big Bend, Wisconsin, claims \$4,121.00 for overpayment of income taxes for the years 1989 and 1990. When the claimant received the assessment for the delinquent taxes he paid the full amount and then had his accountant file the returns. The claimant's accountant assured him that the returns would be filed in time for the claimant to

request a refund of any overpayments, however, the accounting firm failed to file the returns within that time period because the accountant working on the returns went on maternity leave. The claimant requests reimbursement of the overpayment of his income taxes. The department recommends denial of this claim. The returns were not filed until more than four years after the assessment date. S. 71.75 (5), Stats., prohibits the department from refunding the overpayment since no refund was claimed within two years of the assessment date. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees 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. Clyde H. Lockard of Columbiana, Ohio, claims \$396.19 for uninsured medical bills, broken glasses and damaged trousers. The claimant was visiting Circus World Museum when he tripped and fell. The claimant's face hit the pavement, breaking his glasses and injuring his cheek. The claimant's trousers were also torn. He requests reimbursement for his uninsured medical bills and other damages. Circus World Museum recommends denial of this claim. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees 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. The Claims Board originally heard and denied the claim of Robert and Suzanne Saletra on December 4, 1997. The claimants now petition the Board for another hearing of their \$10,426.14 claim for reimbursement of overpayment of delinquent taxes. The Board concludes the petition for rehearing should be denied.

The Board concludes:

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

Irene Brown	Robert G. Wojcik, Sr.
Violet Thompson	Antion Delarosa
Ralph & Caroline Kobb	Terry Holloway
Jerome L. Teeters	Raymond Collins
Kenosha County	Tammy M. Leinen
Waushara County	Michael A. Stach
Bradley Copeland	Clyde H. Lockard
Sarah Gallow-Czarnecki	Robert & Suzanne Saletra
Matthew Steffens	

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

Jennifer Sargent	\$220.00
Joyce M. Uhren	\$50.00
Sandra & Brian Swanson	\$1,000.00

Dated at Madison, Wisconsin this 29th day of April, 1997.

ALAN LEE, Chair

Representative of the Attorney General

EDWARD D. MAIN, Secretary

Representative of the Secretary of Administration

SHERYL ALBERS

Assembly Finance Committee

STEWART SIMONSON

Representative of the Governor

**State of Wisconsin
Department of regulation and Licensing**

April 30, 1997

The Honorable, The Senate:

In accordance with WSS 961.36(3) enclosed please find the 1995-1996 Controlled Substances Board Annual Report.

It is hoped that the Senate will find this report useful.

Sincerely,

PATRICK D. BRAATZ

Administrator

Division of Health Professionals and Services Licensing

**State of Wisconsin
Department of Administration**

April 30, 1997

The Honorable, The Legislature:

This report is transmitted as required by sec. 20.002(11)(f) of the Wisconsin Statutes, (for distribution to the appropriate standing committees under sec. 13.172(3) Stats.), and confirms that the Department of Administration has found it necessary to exercise the "temporary reallocation of balances" authority provided by this section in order to meet payment responsibilities and cover resulting negative balances during the month of March, 1997.

On March 20, 1997 the **Wisconsin Health Education Loan Repayment Fund** balance was -\$1 thousand. This shortfall increased to -\$2 thousand on March 31, 1997 and continued through the end of the month. This shortfall was due to the timing of revenues.

On March 19, 1997 the **Wisconsin Petroleum Inspection Fund** balance was -\$2.06 million. This shortfall continued until March 25, 1997 when the balance reached \$6.40 million. This shortfall was due to the timing of revenues.

On March 1, 1997 the **Information Technology Investment Fund** balance was -\$550 thousand. This shortfall continued until March 6, 1997 when the balance reached \$154 thousand. This shortfall was due to the timing of revenues.

The Wisconsin Health Education Loan Repayment, Wisconsin Petroleum Inspection and Information Technology Investment Fund shortfalls were not in excess of the \$400 million ceiling and did not exceed the balances of the Funds available for interfund borrowing. This shortfall was due to the timing of revenues.

The distribution of interest earnings to investment pool participants is based on the average daily balance in the pool and each fund's share. Therefore, the monthly calculation by the State Controller's Office will automatically reflect the use of these temporary reallocations of balance authority.

Sincerely,

MARK D. BUGHER

Secretary

Referred to joint committee on **Finance**.

**State of Wisconsin
Ethics Board**

May 5, 1997

To the Honorable the Senate:

At the direction of § 13.685(7), *Wisconsin Statutes*, I am furnishing you with the names of organizations recently registered with the Ethics Board that employ one or more individuals to affect state legislation or administrative rules, and notifying you of changes in the Ethics Board's records of licensed lobbyists and their employers. For each recently registered organization I have included the organization's

description of the general area of legislative or administrative action that it attempts to influence and the name of each licensed lobbyist that the organization has authorized to act on its behalf.

Organizations recently registered:

Below are the names of organizations recently registered with the Ethics Board as employing one or more individuals to affect state legislation or administrative rules.

Harnischfeger Industries Inc.

Subject(s): Legislation affecting manufacturers; mining law issues, tax laws and regulations; environmental laws and regulations; laws and regulations relating to employment issues.

Lundgren, K Thor

Memorial Life Insurance Company, American

Subject(s): Rule-making related to the implementation of Senate Bill 535, which was recently signed into law.

Klauser, David

Kuehn, Ronald W

Peltz Group Inc., The

Subject(s): All matters affecting solid waste management and recycling industry, including environmental, tax and general business matters.

Fassbender, Robert I

Osborne, Patrick

Organization's authorization of additional lobbyists:

The following organizations previously registered with the Ethics Board have authorized to act on their behalf these additional licensed lobbyists:

Cooperatives, Wisconsin Federation of

Arts, James L

Head Start Assn., Wisconsin

Hilbert, Lisa

Jentz, Robert

Lung Assn. of Wisconsin Inc., American

Radtke, Randall

Midwest Express Airlines Inc.

Bright, Michael

Also available from the Wisconsin Ethics Board are reports identifying the amount and value of time state agencies have spent to affect legislative action and reports of expenditures for lobbying activities filed by the organizations that employ lobbyists.

Sincerely,

R. ROTH JUDD

Executive Director

**REFERRALS AND RECEIPT OF
COMMITTEE REPORTS CONCERNING
PROPOSED ADMINISTRATIVE RULES**

Senate Clearinghouse Rule 96-187

Relating to the sunset of NR 728.11

Submitted by Department of Natural Resources.

Report received from Agency, May 7, 1997.

Referred to committee on **Agriculture and Environmental Resources**, May 7, 1997.

Senate Clearinghouse Rule 97-002

Relating to do-not-resuscitate bracelets to alert emergency health care personnel of do-not-resuscitate orders.

Submitted by Department of Health and Family Services.

Report received from Agency, April 30, 1997.

Referred to committee on **Health, Human Services, Aging, Corrections, Veterans and Military Affairs**, May 7, 1997.

Senate Clearinghouse Rule 97-003

Relating to federal emission standards for chromium electroplating and chromium anodizing operations.

Submitted by Department of Natural Resources.

Report received from Agency, May 7, 1997.

Referred to committee on **Agriculture and Environmental Resources**, May 7, 1997.

The committee on **Agriculture and Environmental Resources** reports and recommends:

Senate Clearinghouse Rule 96-040

Relating to the waiver of approvals, fees and other requirements of ch.29, stats., for.

No action taken.

Senate Clearinghouse Rule 96-135

Relating to endangered and threatened species.

No action taken.

Senate Clearinghouse Rule 96-174

Relating to the Lake Superior fisheries management plan.

No action taken.

Senate Clearinghouse Rule 96-177

Relating to waiver of the slow-no-wake speed restriction on the Wild Rose Mill Pond, Waushara County.

No action taken.

Senate Clearinghouse Rule 96-191

Relating to prohibiting the sale of butane, propane, mixtures of butane and propane or other gaseous hydrocarbons for use as refrigerants in mobile air conditioners.

No action taken.

Alice Clausing
Chairperson

The committee on **Economic Development, Housing and Government Operations** reports and recommends:

Senate Clearinghouse Rule 96-127

Relating to conditions under which the department of employe trust funds will treat payments received under a court order or compromise settlement as earnings for retirement benefit purposes and will restore a reinstated employe's insurance coverages.

No action taken.

Senate Clearinghouse Rule 96-183

Relating to the registration and regulation of agents authorized to represent funeral directors or funeral establishments in the sale or solicitation of burial agreements that are funded with the proceeds of a life insurance policy.

Report objection recommended, Ayes 3, Noes 2.

Ayes, 3 – Senators Moore, Plache and Weeden.

Noes, 2 – Senators Grobschmidt and Fitzgerald.

Referred to joint committee for **review of Administrative Rules**, May 7, 1997.

Senate Clearinghouse Rule 96-193

Relating to the regulation of cemetery authorities, cemetery salespersons and preneed sellers of cemetery merchandise.

No action taken.

Senate Clearinghouse Rule 96-194

Relating to evidence required to obtain a veterinary license for a candidate who is not a graduate of a school that has been approved by the board.

No action taken.

Senate Clearinghouse Rule 97-001

Relating to educational requirements for real estate salesperson's and broker's licenses.

No action taken.

Gwendolynne Moore
Chairperson

**LEGISLATIVE REFERENCE BUREAU
CORRECTIONS**

CORRECTIONS IN:

1997 SENATE BILL 185

Prepared by the Legislative Reference Bureau
(May 1, 1997)

1. Page 2, line 3: delete "the use of" and substitute "use of".