

STATE OF WISCONSIN
Senate Journal
Ninety–Third Regular Session

WEDNESDAY, September 30, 1998

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

PETITIONS AND COMMUNICATIONS

**State of Wisconsin
Department of Agriculture, Trade and Consumer
Protection**

September 11, 1998

The Honorable, The Legislature:

[1991 Wisconsin Act 273](#) created section 1.11(2)(j), Wis. Stats., which requires the submittal of an annual report to the chief clerk of each house of the Legislature by September 15 regarding the preparation of environmental assessments and environmental impact statements.

I am submitting the attached report prepared by the Department of Agriculture, Trade and Consumer Protection for fiscal year 1998 to comply with this requirement.

Please contact Buzz Davis of my staff at 224-4593 if there are any questions regarding the report.

Sincerely,
BEN BRANCEL
Secretary

**State of Wisconsin
Department of Natural Resources**

September 14, 1998

The Honorable, The Legislature:

I am pleased to send you this report on the [Future Funding for Recycling in Wisconsin](#). The report responds to the 1997-99 budget directive to the DNR to look at the alternatives for continuing the funding of recycling programs through the year 2004. Though the report is not due until December 31, 1998, I felt it was important to have this report finished and the alternatives available for discussion at the earliest possible date.

This report was prepared by a work group consisting of DNR and UW-Extension staff. Work group members relied on material prepared for the Legislative Council Special Committee on the Future of Recycling for much of the background for this report. The work group publicized and held a public meeting attended by thirty interested parties and accepted written comments for over six weeks before finalizing their report.

Based on their feedback, it became clear that there was no consensus among the various interested parties about the best approach to take. The work group decided that a reasonable course of action would be to lay out the most viable options and present them to you for consideration. Those options appear under the "Analysis of Alternatives" section.

If you have any comments or questions about this report please direct them to me, Sue Bangert, Director of Waste

Management, (608-266-0014), or Kathy Curtner, Director of the Bureau of Community Financial Assistance, (608-266-0860). Thank you.

Sincerely,
GEORGE E. MEYER
Secretary

**State of Wisconsin
Groundwater Coordinating Council**

August, 1998

The Honorable, The Legislature:

This is the 1998 Groundwater Coordinating Council (GCC) Report to the Legislature. The GCC was formed in 1984 to help state agencies coordinate non-regulatory activities and exchange information on groundwater. The GCC has served as a model for interagency coordination and cooperation among state government officials, the Governor, local government and federal government. It has achieved the distinction of being one of the few groups in the nation to effectively coordinate groundwater activities in its state from an advisory position.

We hope you, your staff, and the public will find this report a useful reference in protecting Wisconsin's valuable groundwater resource.

Sincerely,
SUSAN L. SYLVESTER, Chair
Groundwater Coordinating Council

**State of Wisconsin
Ethics Board**

September 15, 1998

The Honorable, The Senate:

At the direction of s. [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.

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:

Consolidated Papers Inc.

[Laatsch, Timothy](#)

Termination of lobbying authorizations:

The following individuals are no longer authorized to lobby on behalf of the organizations listed below, as of the dates indicated.

Journal Communications Inc.

Remsik, Jeffrey J 9/14/98

Nature Conservancy

Cieslewicz, David 9/14/98

Rural Water Assn., Wisconsin

Selchert, Robert 9/8/98

School Administrators, Assn. of Wisconsin

Laatsch, Timothy 9/9/98

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,
ROTH JUDD
Director

**State of Wisconsin
Ethics Board**

September 22, 1998

The Honorable, The Senate:

At the direction of s. 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.

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:

Automatic Merchandising Council, Wisconsin

Fonfara, Thomas

Johnson Controls, Inc

Fonfara, Thomas

Termination of lobbying authorizations:

The following individuals are no longer authorized to lobby on behalf of the organizations listed below, as of the dates indicated.

Alliant (formerly Wis Power & Light Co)

Theo, Peter 9/16/98

Applied Power Inc

Brown, George 9/18/98

Fire Chiefs Assn, Wisconsin State

Brown, George 9/21/98

Johnson Controls, Inc

Brown, George 9/21/98

Lake Como Sanitary District

Brown, George 9/18/98

Podiatric Medicine, Wisconsin Society of

Brown, George 9/21/98

Property Valuation Associates Inc

Brown, George 9/21/98

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,
ROTH JUDD
Director

**State of Wisconsin
Ethics Board**

September 29, 1998

The Honorable, The Senate:

At the direction of s. 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.

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:

Plastics Council Inc, American

Fonfara, Thomas

Termination of lobbying authorizations:

The following individuals are no longer authorized to lobby on behalf of the organizations listed below, as of the dates indicated.

Amusement and Music Operators, Wisconsin

Brown, George 9/23/98

Electric Power Co, Wisconsin

Brown, George 9/23/98

Johnson-Keland Land Company Inc

Brown, George 9/23/98

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,
ROTH JUDD
Director

**State of Wisconsin
Claims Board**

September 16, 1998

The Honorable, The Senate:

Enclosed is the report of the State Claims Board covering the claims heard on August 27, 1998.

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 in the State Capitol, Room 417 North, Madison, Wisconsin on August 27, 1998, upon the following claims:

Claimant	Agency	Amount
1. Ringhand Meats & Beverages, Inc.	Agriculture, Trade & Consumer Protection	\$5,144.05
2. Marcia Klein	Health and Family Services	\$5,274.29
3. Green Tree Financial Services	Financial Institutions	\$20,532.00
4. Delmar L. Smith	Revenue	\$10,954.74
5. Tillman Mosley	Revenue	\$9,392.14
6. Eugene Parks	Revenue	\$49,659.70
7. Wisconsin Gas Company	Transportation	\$965.49
8. Wisconsin Gas Company	Transportation	\$1,590.07
9. Wisconsin Gas Company	Transportation	\$450.77

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

Claimant	Agency	Amount
10. Cedar Grove Cheese, Inc.	Agriculture, Trade & Consumer Protection	\$711.61
11. National Farmers Organization	Agriculture, Trade & Consumer Protection	\$102.38
12. Gus W. Ernst	Natural Resources	\$2,754.00
13. Lichtfeld Plumbing, Inc.	Administration	\$172.00
14. Scott & Brenna Miles	University of Wisconsin	\$720.21
15. Barbara Mariann Rush	Health and Family Services	\$93.19
16. James D. Weichelt	Revenue	\$673.13

In addition, the following claim, presented at a previous hearing, was considered and decided:

Claimant	Agency	Amount
17. Deiss Sanitation	University of Wisconsin	\$33,305.00

In addition, the board discussed its long-standing policy of not holding hearings for stale-dated checks over six years old.

The Board Finds:

1. Ringhand Meats and Beverages, Inc., of Evansville, Wisconsin claims \$5,144.05 for the cost of refinishing the floor of the claimant's meat processing plant. The claimant alleges that the floors of the plant were finished in accordance with instructions from Arthur Ness of DATCP's Meat Safety Division. The claimant claims that Mr. Ness instructed the floor contractor to finish the floors to a smooth finish and that they are now extremely hazardous when wet, causing several people to slip and fall. The claimant buffed the floors in an attempt to roughen them but this was not successful. The claimant has received a \$5,000 estimate for shot blasting the floors to provide a rougher surface. He requests reimbursement for the cost of renting the buffer (\$144.05) and the cost of refinishing the floors (\$5,000). DATCP states that neither Mr. Ness nor any

other state employe recommended that the floors in the plant be smooth. Department regulations require that the floor be impervious, not smooth. Furthermore, Department regulations state that floors that become wet must have a non-slip surface. The claimant received written materials that included these specifications for floors. The floors were apparently finished according to the architect's specifications, which state, "Interior concrete slabs shall have a monolithic steel-trowelled finish". The architect's spec sheet for the plant was never submitted to the Department prior to construction. A DATCP inspector states that he overheard the floor contractor ask the claimant if the floor was smooth enough for him and that the claimant told the contractor to make another pass to make the floor smoother. The claimant has been in the business for approximately 30 years. He has two facilities and has remodeled an existing one. He received written information from the Department, including the floor specifications, in 1988 and again in 1996. 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. Marcia Klein of Appleton, Wisconsin claims \$5,274.29 for reimbursement of attorney's fees and other expenses allegedly incurred because of an open records request. The claimant is employed at Wisconsin Resource Center (WRC). In July 1996 two patients at the center, who were detained there under Chapter 980 Stats., as sexually violent persons, made open records requests for copies of the claimant's personnel file. At that time, the state planned on releasing a portion of the file to the requesters. The claimant retained an attorney and sued the state to keep it from releasing the file. The two patients requesting the records had themselves added to the lawsuit as defendants. After receiving additional patient requests for the personnel files of various other employes, the state reversed its position regarding release of the file. The state refused to release any portion of the claimant's personnel file based on the "balancing test" exemption of the Public Records Law. The claimant argued that position as well, and also argued that the patients were "incarcerated persons" and therefore were not proper requesters under s. 19.32 (3). The Circuit Court agreed with the state's position. The two patients appealed. The Court of Appeals upheld the Circuit Court's decision, based on the state's "balancing test" argument, but rejected the claimant's argument that the patients were "incarcerated persons" under s. 19.32 (3). The claimant requests reimbursement for her attorney's fees, interest, lost wages, and travel expenses. DHFS states that from the time it reversed its position and denied access to the records (9/10/96) through the Court of Appeals decision (4/1/98), the claimant and DHFS took the same position; the only difference was their legal reasoning. Both courts adopted DHFS' legal reasoning and rejected the claimant's therefore her legal expenditures during this period did not contribute in any way to the ultimate resolution of the case. DHFS also points out that a portion of her claim is for expenses incurred in supporting legislation to exempt committed inpatients from the definition of "requester" under Public Records Law. DHFS supported this legislation and does not feel the state should pay expenses an employe incurs in backing legislation that is sponsored by the state to improve the employe's working conditions. Finally, DHFS feels the claim should not be paid because the legislature has specified those circumstances in which the State is required to pay private citizens' legal costs, and this situation is not among them. (See ss. 814.245 and 277.485, Stats.) The Board concludes the claim should be paid in the reduced amount of \$2,500.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made

from the Claims Board appropriation s. 20.505 (4) (d), Stats. (*Member Lee not participating.*)

3. Green Tree Financial Servicing Corporation of St. Paul, Minnesota claims \$20,532.00 for refund of an alleged overpayment caused by an error in the claimant's 1997 Foreign Corporation Annual Report. The claimant states that it entered an incorrectly calculated apportionment factor showing 36 percent of its business for 1996 in Wisconsin when in fact only 1.39 percent of its business during that period was in Wisconsin. The claimant states that the majority of its business is done in states other than Wisconsin. To support this statement, the claimant points to its 1995 and 1996 Foreign Corporation Annual Reports, which show apportionment percentages for Wisconsin of .8799 and 1.273, respectively. The claimant believes that the documents that it has submitted prove that the apportionment factor on the originally filed report was incorrect and requests reimbursement of the fee overpayment caused by the error. DFI recommends denial of this claim because the Department has no way of verifying the accuracy of the information provided in the original report or in the articles of correction applying to the original report. In filing documents and annual reports and collecting the corresponding statutory fees, DFI performs a ministerial function and relies solely on the information set forth in such reports and documents. The source of that information is in the exclusive control of the corporation. The revenue generated from the collection of these fees ranges from approximately \$2 to \$4 million annually. It derives from reports and applications filed in the same circumstances as those attending the report on which the claimant seeks recovery. Accordingly, there is the potential of important future consequences in allowing a claim of this nature. To support its recommendation for denial, DFI points to a 1981 informal opinion of the Attorney General relating to a similar 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.

4. Delmar L. Smith of Madison, Wisconsin claims \$10,954.74+ for refund of overpayment of income taxes for the years 1991–1993. In March 1996 the Department of Revenue began garnishing the claimant's paycheck for payment of assessments for the above years. The claimant admits that he did not timely file income tax returns for these years and accepts that late fee's and interest should be added as a penalty. However, the claimant feels that \$6,370.26 in interest penalties and fees, which he has paid, is sufficient punishment for him not filing his taxes on time. The claimant believes that the state keeping \$10,954.74 in overpayment is unjust and requests reimbursement of that amount. DOR recommends denial of this claim. The claimant failed to timely file his 1991, 1992 and 1993 income tax returns. Estimated income tax assessments for 1991 and 1992 were issued on October 17, 1994. An estimated assessment for 1993 was issued on November 4, 1996. All three returns were filed in February 1997. Section 71.75(5), Stats., prohibits DOR from refunding the money that was applied to the 1991 and 1992 assessments, since no refund was claimed within the prescribed two-year time period. Since the 1993 return was filed within the prescribed two-year, all payments applied to the 1993 estimate were credited to the actual liability leaving a delinquent balance due as of April 23, 1998, of \$2,112.35. 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. 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 Simonson dissenting.*)

5. Tillman Mosley of Dayton, Ohio claims \$9,392.14 for refund of overpayment of income taxes for the years 1991–1992. The Department of Revenue issued an estimated assessment for these two years in the amount of \$17,000. In January 1997 DOR began garnishing the claimant's wages in the amount of \$1,000 per month. The total amount taken by DOR was \$10,577.16. After the claimant submitted his 1991 and 1992 income taxes, he discovered that he had overpaid in the amount of \$9,392.14. The claimant believes that the estimated assessment was based on a fictitious number. The claimant also states that, based on the monthly statements he received from DOR, which stated that an overpayment would be refunded, he believed that the state would refund him any overpayment. DOR states that the claimant has a history of not filing his tax returns in a timely manner and that five of his last seven tax returns were filed anywhere from a year to five years late. DOR issued an estimated income tax assessment for the 1991 and 1992 taxes on November 21, 1994. The claimant filed the 1991 taxes on November 14, 1995, upon which a call was made to him to inform him that a 1992 return was also required to adjust DOR's assessment. The claimant allegedly informed the revenue agent that he would file the 1992 return right away. The 1992 return was not filed until March 6, 1998. DOR has documented as many as 12 contacts with the claimant from April 4, 1995 through March 6, 1998, concerning the filing of these taxes. Section 71.75 (5), Stats., prohibits the Department from refunding any overpayment since no refund was claimed within the prescribed two-year period. 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 Simonson dissenting.*)

6. Eugene Parks of Madison, Wisconsin claims \$49,659.70 for refund of overpayment of income taxes for the years 1987 through 1996. The claimant believes that the assessments issued by the Department of Revenue were excessive and not reasonable as required under section 71.74, Stats. When he filed his taxes in December 1997, the claimant discovered that the total amount of tax he actually owed for the years in question was \$2,624. The claimant believes that the huge discrepancy between what he actually owed and the amount garnished by DOR proves that the DOR's assessments were excessive and arbitrary. The claimant further alleges that DOR is denying his refunds based on an excessively narrow reading of s. 71.75 (2), Stats., and that he is due a refund under the doctrine of equitable recoupment. He believes that there is nothing in s. 71.75 (2), Stats., that prevents DOR from crediting his account in the amount by which prior assessments exceed liabilities. He requests that \$911.75 of his outstanding balance be credited to his outstanding sales tax liability and that the remaining \$48,747.95 either be refunded to him or applied to future tax liabilities. DOR states that despite persistent contact, the claimant failed to file income tax returns for the years 1987–1996 until December 5, 1997. In the interim, DOR issued estimated income tax assessments against the claimant for the years 1987 through 1994. The claimant did not contest these estimated assessments and they became final and conclusive and went delinquent. DOR issued wage certifications against the claimant. DOR states that it is prohibited from providing the claimant a refund or credit towards future years (which in substance is nothing more than another way of granting a refund) by the statute of limitations. Section 71.75, Stats., does not provide the claimant with any right to obtain a credit towards his future liabilities. DOR believes that the doctrine of

equitable recoupment has no application to this situation. Equitable recoupment is not a cause of action, it is a defense to a presently pending assessment against the claimant that is not yet final and conclusive. However, DOR does not have an assessment presently pending against the claimant, so the claimant is without a refund claim under the doctrine of equitable recoupment. Furthermore, DOR states that equity only attaches to those who appear with “clean hands”. The claimant failed to timely file income tax returns for 10 years in repeated violation of s. 71.83 (2) (a) 1, Stats., which is a crime. The DOR believes the claimant should not be provided equity for conduct that constitutes a crime. The Department issued estimated assessments against the claimant according to its best judgement. The claimant could have contested the assessments or timely filed his income tax returns and paid the amount of tax he self-reported. He chose not to. 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 Simonson dissenting.*)

7. Wisconsin Gas Company of Milwaukee, Wisconsin claims \$965.49 for gas loss and repair cost for its damaged gas line. The claimant alleges that on or before April 17, 1996, the Department of Transportation cut through the claimant’s gas line while installing a road sign near Caledonia, Wisconsin. The claimant believes that DOT failed to take reasonable action and call to have the location of the underground gas mains and service lines marked in accordance with Wisconsin Statutes s. 182.0175. The claimant requests \$531.00 for labor, \$105.24 for equipment and materials, and \$329.25 for gas loss, for a total claim of \$965.49. DOT states that in 1987 it held a series of meetings with various utilities to discuss permit fees and locate services. A compromise agreement was reached that DOT would waive permit fees and make every effort to request locate services prior to digging, in exchange for which the utilities would hold DOT harmless for damage to their facilities. This agreement has been policy since 1989. This agreement indemnifies DOT for any unintentional damage to utility lines during DOT’s normal course of business. This includes “damage to any property, lines or facilities placed by or on behalf of the applicant, pursuant to this permit or any other permit issued by the State for location of property, lines or facilities on highway right-of-way in the past or present”. The indemnification language appears on every application/permit to bury utility lines on a DOT right of way. DOT makes every effort to call Diggers Hotline whenever possible and practical, however, DOT’s primary duty is to install traffic signs in a timely manner. In this instance, DOT personnel were installing traffic signs on STH-10, when a Waupaca County Sheriff’s Officer requested that they move an existing sign a few feet off of STH-10 to allow room for the County snowplow to adequately plow snow without striking the sign. The sign crew chief made a discretionary decision that the sign could be moved a few feet without a problem. There was no willful intention on the part of DOT to damage the gas main. The claimant knowingly entered an agreement to indemnify and hold the state harmless and repeatedly reaffirmed that agreement by endorsing the permit applications. They should not now be allowed to claim that the state should pay for these damages. The Board concludes the claim should be paid in the amount of \$965.49 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 (3) (eq), Stats.

8. Wisconsin Gas Company of Milwaukee, Wisconsin claims \$1,590.07 for gas loss and repair cost for the claimant’s damaged gas line. The claimant alleges that on or before

November 4, 1997, the Department of Transportation damaged the claimant’s gas main while installing a stop sign near Sparta, Wisconsin. The claimant believes that DOT failed to take reasonable action and call to have the location of the underground gas mains and service lines marked in accordance with Wisconsin Statutes s. 182.0175. The claimant also alleges that the original locate marks had been removed through the addition of topsoil and possibly by a sidewalk, and that DOT had been put on notice that it would need to order new locate marks before performing any work in that area, but failed to do so. The claimant requests \$517.00 for labor, \$568.73 for equipment and materials, and \$504.34 for gas loss, for a total claim of \$1,590.07. DOT states that in 1987 it held a series of meetings with various utilities to discuss permit fees and locate services. A compromise agreement was reached that DOT would waive permit fees and make every effort to request locate services prior to digging, in exchange for which the utilities would hold DOT harmless for damage to their facilities. This agreement has been policy since 1989. This agreement indemnifies DOT for any unintentional damage to utility lines during DOT’s normal course of business. This includes “damage to any property, lines or facilities placed by or on behalf of the applicant, pursuant to this permit or any other permit issued by the State for location of property, lines or facilities on highway right-of-way in the past or present”. The indemnification language appears on every application/permit to bury utility lines on a DOT right of way. DOT makes every effort to call Diggers Hotline whenever possible and practical, however, DOT’s primary duty is to install traffic signs in a timely manner. In this instance, Diggers Hotline was called and the area was marked. The marking flags stopped approximately 40 to 50 feet from the intersection where the sign post hole was dug. At the time of the incident, there were various contractors in the area performing other types of construction and landscaping, who may have inadvertently disturbed the marking flags. The claimant claims to have advised someone on the state crew to call for new markers, however, DOT personnel had no knowledge of any problem with the markers. It is possible that the information had been given to one of the contractors working in the area. DOT felt safe in digging due to the distance between the markers and the digging site. There was no willful intention on the part of DOT to damage the gas main. The claimant knowingly entered an agreement to indemnify and hold the state harmless and repeatedly reaffirmed that agreement by endorsing the permit applications. They should not now be allowed to claim that the state should pay for these damages. 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.

9. Wisconsin Gas Company of Milwaukee, Wisconsin claims \$450.77 for gas loss and repair cost for the claimant’s damaged gas line. The claimant alleges that on or before August 20, 1997, the Department of Transportation damaged the claimant’s gas line while installing a road sign near Downing, Wisconsin. The claimant believes that DOT failed to take reasonable action and call to have the location of the underground gas mains and service lines marked in accordance with Wisconsin Statutes s. 182.0175. The claimant requests \$153.00 for labor, \$293.70 for equipment and materials, and \$4.07 for gas loss, for a total claim of \$450.77. DOT states that in 1987 it held a series of meetings with various utilities to discuss permit fees and locate services. A compromise agreement was reached that DOT would waive permit fees and make every effort to request locate services prior to digging, in exchange for which the utilities would hold DOT harmless for damage to their facilities. This agreement has been policy since 1989. This agreement

indemnifies DOT for any unintentional damage to utility lines during DOT's normal course of business. This includes "damage to any property, lines or facilities placed by or on behalf of the applicant, pursuant to this permit or any other permit issued by the State for location of property, lines or facilities on highway right-of-way in the past or present". The indemnification language appears on every application/permit to bury utility lines on a DOT right of way. DOT makes every effort to call Diggers Hotline whenever possible and practical, however, DOT's primary duty is to install traffic signs in a timely manner. In this instance, DOT was doing some final touch up work for the signing of a recently completed construction project. A decision was made to move a signpost from behind a guy wire in order to make the sign more visible. The moved pole was placed at a maximum of 24 feet 4 inches from the center line of STH-170. The claimant's permit called for the gas line to be placed 27 feet from the center line of STH-170. The gas line had been placed at least 3 feet closer to the center of the road than it was permitted to be. There was no willful intention on the part of DOT to damage the gas main. The claimant knowingly entered an agreement to indemnify and hold the state harmless and repeatedly reaffirmed that agreement by endorsing the permit applications. They should not now be allowed to claim that the state should pay for these damages. The Board concludes the claim should be paid in the amount of \$450.77 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 (3) (eq), Stats.

10. Cedar Grove Cheese, Inc. of Plain, Wisconsin claims \$711.61 for damage to equipment at the claimant's dairy plant during an inspection by a Department of Agriculture, Trade & Consumer Protection Inspector on January 14, 1998. The claimant requests reimbursement for the cost of repairing the equipment in the amount of \$711.61. DATCP does not contest payment of this claim. DATCP's inspector has admitted that he caused the damages and an inspection of the incident by the inspector's field supervisor has confirmed the claimant's allegations. DATCP therefore acknowledges limited liability for the costs incurred by the claimant to fix the equipment. The Board concludes the claim should be paid in the amount of \$711.61 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Agriculture, Trade & Consumer Protection appropriation s. 20.115 (1) (a), Stats.

11. National Farmers Organization of Fond du Lac, Wisconsin claims \$102.38 for the cost to repair copy machine that was allegedly damaged by Department of Agriculture, Trade & Consumer Protection inspectors on January 7, 1998. During the inspection, one of the inspectors placed a gallon of liquid sanitizer on the glass of the copy machine, in order to make a photocopy of the label on the bottle. Some sanitizer leaked from the bottle and damaged the machine. DATCP does not contest payment of this claim. The DATCP inspector admits placing the bottle of sanitizer on the machine to photocopy the label. DATCP therefore acknowledges limited liability for the costs incurred by the claimant to fix the machine. The Board concludes the claim should be paid in the amount of \$102.38 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Agriculture, Trade & Consumer Protection appropriation s. 20.115 (1) (a), Stats.

12. Gus W. Ernst of Plymouth, Wisconsin claims \$2,754.00 for a relocation incentive award (RIA) related to his job transfer. As a result of the Department of Natural Resources' reorganization, the claimant was displaced out of his job as a Conservation Warden Supervisor 2. The claimant accepted a voluntary demotion to a Conservation Warden Supervisor 1

position in Plymouth, WI. Prior to accepting the position, the claimant contacted the Southeast Region Human Resources Manager, who told him that he would receive the RIA if he accepted the position. The claimant double-checked this information with his immediate supervisor, who also told him he would receive the RIA if he accepted the Supervisor 1 position. The claimant states that the receipt of this award was a factor in his family's eventual decision to accept the position and relocate to Plymouth, WI in September 1997. In December 1997, the claimant was informed that he would not receive the RIA because RIAs are granted only to employees who relocate as a result of promotion or transfer, not demotion. The claimant requests payment of the \$2,754.00 RIA that he was told he would receive. DNR recommends payment of this claim. There is no dispute that the claimant was told he would receive the RIA and DNR believes that he accepted the new position with that understanding. The claimant is without fault in this matter. Because of statutory restrictions, DNR is without authority to make the RIA payment in the absence of an award by the Claims Board. The Board concludes the claim should be paid in the amount of \$2,754.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Natural Resources appropriation s. 20.370 (3) (mu), Stats. The Board also strongly urges the DNR to instruct all of its employees on the statutes and policies relating to relocation incentive awards, so as to avoid future misunderstandings of this type.

13. Lichtfeld Plumbing, Inc. of Madison, Wisconsin claims \$172.00 for unpaid labor time allegedly incurred because a state employe told the claimant's employe to stop work on a plumbing job at the Hill Farms State Office Building. The claimant was the low bidder for a plumbing proposal that included changing 6" water meters to 4" water meters. The claimant states that they were given flanges provided by the city to use on the job, however, when the claimant's employe arrived on site they discovered that the flanges did not match the new 4" meter and could not be used. The plumbers called the office and the claimant proceeded to try and locate flanges that would work for the job. Several hours later, the claimant called back to the job site and was allegedly told by Stan Lynch, a Department of Administration employe, that he had told the plumbers to stop working. The claimant states that this was done without its knowledge or approval and requests reimbursement for two hours lost labor time in the amount of \$172 plus interest. DOA states that Mr. Lynch did not pull the plumbers off the job, but only told them to call their office regarding the dispute that had arisen over the flanges. This occurred after Mr. Lynch had already spoken with the claimant, who had indicated that the state would be charged extra because the city-provided flanges could not be used. Several other telephone conversations occurred between the claimant and DOA personnel, which resulted in an agreement that the claimant would not charge the state for the cost of having to use other flanges and would complete the job at the originally quoted price. DOA also states that the claimant was never told that it had to use the flanges provided by the city. The state offered no direction as to how the meter change should be accomplished, rather, design of the plumbing job was left to the expertise of the vendor. The claimant has been paid in full for the plumbing job and should not receive any additional compensation. 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 Main not participating.*)

14. Scott and Brenna Miles of Santa Monica, California claim \$720.21 for the cost of concert tickets and uninsured medical

expenses allegedly incurred due to an accident at the University of Wisconsin. The claimants were attending a concert at Camp Randall on June 25, 1997. Brenna Miles tripped on something on a step in the aisle and fell. Her ankle swelled up and she had to go to the emergency room for treatment. The claimants had health insurance coverage for the initial treatment, but not for the rehabilitation costs, which total \$615.21. They also request reimbursement for the cost of the concert tickets (\$105), since they missed the entire concert due to the accident. The UW recommends denial of this claim. Ms. Miles slipped on an unknown object while walking down the stairs. The UW feels there was no negligence on the part of a state employee and that there appears to be no equitable basis for payment. 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.

15. Barbara Mariann Rush of Middleton, Wisconsin claims \$93.19 for vehicle damage allegedly caused by an accident on the grounds of Mendota Mental Health Institute, where the claimant is employed. On December 10, 1997, the claimant was on her way to work, driving very slowly because of snowy weather conditions. She states that the road had just been plowed, but that the plow had missed an area of the road and that this area was covered with loose snow. When she hit this area, the claimant's vehicle slid into the curb and her wheel cover was damaged. The claimant believes that snow removal personnel were negligent in missing this area of the road and requests reimbursement for her damages. She further states that she is a senior citizen on a fixed income and that it would be extremely difficult for her to absorb this cost. Her insurance deductible is \$250. DHFS recommends that this claim be denied. Mendota Mental Health Institute has specific snow removal procedures. While every effort is made to remove snow from all roadways before employees arrive for work, the reality of a Wisconsin winter doesn't always allow for this. Drivers must take responsibility for maintaining control their vehicle. DHFS does not believe there was negligence on the part of its employees or that the claim should be paid based on equitable principles. 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.

16. James D. Weichelt of New Berlin, Wisconsin claims \$673.13 for interest paid as a result of delinquent income tax. The claimant states that in 1996 he lived and worked in Illinois but maintained his Wisconsin driver's license, which, unbeknownst to him, kept him from being established as an Illinois resident for tax purposes. The claimant's employer withheld taxes for the State of Illinois in the amount of \$1,227, considerably less than what would have been withheld for Wisconsin taxes. The claimant hired an accountant to prepare his 1996 taxes. The accountant filed a Wisconsin tax return on the claimant's behalf, claiming credit for the tax already paid to Illinois. The accountant told the claimant that Wisconsin and Illinois would work out the difference and that Wisconsin would send him a bill. The claimant states that he did not receive any bill from Wisconsin and contacted his accountant, who told him that the bill would come. The Department of Revenue did not send a bill until June 1997 and the bill was sent to the claimant's old address, his parent's house. The claimant's parents were out of town for the summer and he therefore did not receive the bill until August 1997. The claimant contacted his accountant and demanded that he straighten things out. The accountant then sent an amended tax return to the State of Illinois in order to get back the taxes that had been withheld. The

claimant did not have the money to pay the delinquent Wisconsin taxes and was forced to wait until February 17, 1998, when he finally received the tax refund from Illinois. The claimant requests that he be reimbursed the \$673.13 interest on his delinquent Wisconsin taxes, since the error was no fault of his own. DOR recommends denial of this claim. This claim involves a tax return that was prepared incorrectly by the claimant's accountant. The claimant's 1996 tax return was filed as a full-year resident of Wisconsin, claiming credit for taxes paid to the State of Illinois on the income earned in Illinois. Since a reciprocal agreement exists between Wisconsin and Illinois, all income of a Wisconsin resident is taxable in Wisconsin and DOR disallowed tax credit paid to Illinois. The claimant should pursue his claim against the accountant who incorrectly prepared his tax return. 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. Deiss Sanitation of River Falls, Wisconsin claims \$33,305.00 for attorney fees and reimbursement of two-thirds of a lawsuit settlement related to the claimant's work for University of Wisconsin-River Falls. The claimant was a contract waste hauler for UWRF from 1979 through 1985. During that period of time, the claimant deposited waste, including waste generated at UWRF, in the Junker Landfill. The Junker Landfill was subsequently found by the DNR to contain hazardous substances that were being released into the environment. Remedial clean up of the site was required. The Junker Landfill Trust assumed responsibility for the remediation activities. The Trust then commenced action against the claimant under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6972(a), for costs associated with the clean-up. The claimant settled this litigation by the payment of \$40,000 to the Junker Landfill Trust. The claimant alleges that he was never informed that UWRF was exempt from paying a portion of the remediation costs and states that he would never have settled the way he did if he had known UWRF was not required to pay. He believes that he is an innocent party, who was hauling the UW's waste to a site approved by the DNR, and that it is unfair for the burden of the clean-up costs to fall on his small business. The claimant requests reimbursement of the portion of the settlement that he attributes to the waste generated by UWRF. This amount is calculated at \$30,000, or three-quarters of the total, which the claimant contends reflects the percentage of his total waste generated by UWRF. The claimant also requests reimbursement of three-quarters of his attorneys fees, for a total claim of \$33,305.00. The UW recommends denial of this claim. The state and the UW cannot be sued in either state or federal court without their consent, and that consent has not been given with respect to the RCRA litigation that underlies this claim. In effect, neither the state nor the UW can be compelled to participate in the remedial clean-up efforts undertaken by the Junker Landfill Trust, and thus cannot be compelled to pay costs incurred by the claimant in connection with the clean-up. The Board believes that a claim against the UW should have been made at the time of the settlement. Because of the settlement, the Board does not have sufficient facts to determine the role of the UW in this situation. Therefore, 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 Albers dissenting.*)

The Board concludes:

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

Ringhand Meats & Beverages, Inc.
 Green Tree Financial Services Corp
 Delmar L. Smith
 Tillman Mosley
 Eugene Parks
 Wisconsin Gas Company (claim #8)
 Lichtfeld Plumbing, Inc.
 Scott and Brenna Miles
 Barbara Mariann Rush
 James D. Weichelt
 Deiss Sanitation

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

Marcia Klein	\$2,500.00
Wisconsin Gas Company (claim #7)	\$965.49
Wisconsin Gas Company (claim #9)	\$450.77
Cedar Grove Cheese, Inc.	\$711.61
National Farmers Organization	\$102.38
Gus W. Ernst	\$2,754.00

3. The board concludes that its long-standing policy of not holding hearings for stale-dated checks over six years old should remain in effect.

Dated at Madison, Wisconsin this 16th day of September 1998.

Alan Lee, Chair
 Representative of the Attorney General
 Edward D. Main, Secretary
 Representative of the Secretary of Administration
 Dale Schultz
 Senate Finance Committee
 Sheryl Albers
 Assembly Finance Committee
 Stewart Simonson
 Representative of the Governor

REFERRALS AND RECEIPT OF COMMITTEE REPORTS CONCERNING PROPOSED ADMINISTRATIVE RULES

Senate Clearinghouse Rule 98-045

Relating to septage management.
 Submitted by Department of Natural Resources.
 Report received from Agency, September 28, 1998.
 Referred to committee on **Environment and Energy**, September 30, 1998.

Senate Clearinghouse Rule 98-084

Relating to the wildlife damage abatement program and the wildlife damage claim program.
 Submitted by Department of Natural Resources.
 Report received from Agency, September 28, 1998.
 Referred to committee on **Environment and Energy**, September 30, 1998.

Senate Clearinghouse Rule 98-086

Relating to readjustment of daily bag limits for walleye in response to tribal harvest.
 Submitted by Department of Natural Resources.
 Report received from Agency, September 28, 1998.

Referred to committee on **Environment and Energy**, September 30, 1998.

Senate Clearinghouse Rule 98-091

Relating to the education required of candidates to take the examination leading to receipt of a credential as a certified public accountant after December 31, 2000.

Submitted by Department of Regulation and Licensing.

Report received from Agency, September 29, 1998.

Referred to committee on **Business, Economic Development and Urban Affairs**, September 30, 1998.

Senate Clearinghouse Rule 98-095

Relating to commercial fishing for chubs on Lake Michigan.

Submitted by Department of Natural Resources.

Report received from Agency, September 28, 1998.

Referred to committee on **Environment and Energy**, September 30, 1998.

Senate Clearinghouse Rule 98-096

Relating to the definition of human residence as it pertains to the forest tax law landowners.

Submitted by Department of Natural Resources.

Report received from Agency, September 28, 1998.

Referred to committee on **Environment and Energy**, September 30, 1998.

Senate Clearinghouse Rule 98-101

Relating to administration of the long-term disability insurance program.

Submitted by Department of Employee Trust Funds.

Report received from Agency, September 25, 1998.

Referred to committee on **Human Resources, Labor, Tourism, Veterans and Military Affairs**, September 30, 1998.

Senate Clearinghouse Rule 98-106

Relating to the exemption of elevator access to certain areas within government-owned or operated buildings.

Submitted by Department of Commerce.

Report received from Agency, September 29, 1998.

Referred to committee on **Business, Economic Development and Urban Affairs**, September 30, 1998.

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

Senate Clearinghouse Rule 98-004

Relating to creating an exception for savings and loan associations to the 10% down payment requirement for a mortgage loan which is made to meet the objectives of the federal community reinvestment act.

No action taken.

Senate Clearinghouse Rule 98-010

Relating to full-time and part-time open enrollment.

No action taken.

Senate Clearinghouse Rule 98-038

Relating to environmental education requirements and an urban education license.

No action taken.

Senate Clearinghouse Rule 98-039

Relating to the school district boundary appeals board.

No action taken.

Senate Clearinghouse Rule 98-059

Relating to faculty development grants.

No action taken.

Senate Clearinghouse Rule 98–068

Relating to children with disabilities.

No action taken.

Alberta Darling
Chairperson

The committee on **Transportation, Agriculture and Rural Affairs** reports and recommends:

Senate Clearinghouse Rule 98–082

Relating to temporary license plate and permits.

No action taken.

Alan Lasee
Chairperson

MOTIONS UNDER SENATE RULE 98

for the Month of September 1998

A certificate of commendation by the Wisconsin Senate on the motion of Senator Moen, for “Arcadia on the Air – Radio station KWNO, on the occasion of celebrating 50 years on the Air.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Moen, for Stephen Bice, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Moen, for William Bittner III, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of condolence by the Wisconsin Senate on the motion of Senator George, for the family and friends Harold A. Breier, on the occasion of celebrating with them his life on earth.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Decker, for Matt Bosio, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Decker, for Timothy Duranceau, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Jauch, for Tom Fennessey, on the occasion of being chosen as the 1998 Citizen of the Year.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Decker, for Nicholas G. Giles, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Rosenzweig, for Father John–Mark Gilhousen, O.C.R.M., on the occasion of being named Associate Pastor of the Cathedral Parish of the Holy Angels in Wauwatosa, Wisconsin.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator George, for Reverend Bertram S. Gregg, on the occasion of celebrating his 90th Birthday.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Huelsman, for Chancellor H. Gaylon Greenhill and the University of Wisconsin–Whitewater on the occasion of their outstanding achievement that will ensure high quality education.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Schultz, for Pedro–Pablo Kuczynski, on the occasion of celebrating his 60th Birthday.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Drzewiecki, for Barbara Lane, on the

occasion of celebrating her 35th Anniversary as a female polka band entertainer.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Moen, for Gregory Thomas Lanik, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Ellis, for Nathaniel P. Lewis, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Jauch, for Pat Luostari, on the occasion of being selected the 1998 Citizen of the Year.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Burke, for The Masterson Company, on the occasion of celebrating their Sesquicentennial year.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Grobschmidt, for Thomas More High School, on the occasion of being chosen as a 1997–98 recipient of the Blue Ribbon School Award by the U.S. Department of Education.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Burke, for Steve Ohly, on the occasion of the Robert Wood Johnson Foundation recognizing him as one of ten people nationwide who are changing the shape of Health Care.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Huelsman, for Frances Parker, on the occasion of being chosen the “1998 Citizen of the Year” by the Kiwanis Club of Milton.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Panzer, for Bradley Scott Pierringer, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Breske, for Steven J. Poole, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Darling, for John Paul Puccinelli, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Burke, for Gene and Inez Romans, on the occasion of celebrating their 50th Wedding Anniversary.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Lazich, for Mark Rommelfaenger, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Huelsman, for Wally and Faye Schilberg, on the occasion of being chosen as the “1998 Citizens of the Year” by the Kiwanis Club of Milton.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Cowles, for Shawano and surrounding area of WTCH–AM, on the occasion of 50 years on the Air.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Drzewiecki, for WTCH–AM 960, on the occasion of 50 years on the Air.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Burke, for Honorable Chief Judge Patrick T. Sheedy, on the occasion of his retirement after 18 years of service to the Milwaukee County.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Rude, for the Viroqua United Methodist

Church, on the occasion of celebrating the 150 years of evangelism and service.

A certificate of condolence by the Wisconsin Senate on the motion of Senator George, for the family and friends of Kristin Visser, on the occasion of celebrating with them her life on earth.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Breske, for Edward A. Wambold, on the occasion of his retirement after 32 years of distinguished service to the State of Wisconsin.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Grobschmidt, for Francis T. Wasielewski, on the occasion of being honored as Polish American of the Year.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Schultz, for Mr. John (Jack) M. Welsh, on the occasion of 20 years of dedicated service to Wisconsin and Grant County.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Decker, for Michael Willis, on the occasion of earning and attaining the rank of the Eagle Scout.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Cowles, for Dr. Waldemar Wolfmeyer, on the occasion of years of outstanding commitment to his patients and the community of Kaukauna.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Grobschmidt, for USF Seko Worldwide, on the occasion of being chosen 1998 Business of the Year.