

STATE OF WISCONSIN
Senate Journal
Ninety–Fifth Regular Session

TUESDAY, January 8, 2002

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

**INTRODUCTION, FIRST READING AND
REFERENCE OF BILLS**

Read first time and referred:

Senate Bill 362

Relating to: fees for outdoor advertising signs owned by nonprofit organizations.

By Senators Harsdorf, Darling and Roessler; cosponsored by Representatives Johnsrud, Gronemus, Sherman, Musser, Plouff, Pettis, Olsen, Ott, Petrowski, Albers, Townsend, Rhoades, Freese, Hines, Miller and Kreibich.

To committee on **Insurance, Tourism, and Transportation**.

Senate Bill 363

Relating to: prohibitions related to explosives, destructive devices, detonators, or weapons of mass destruction; increased penalties for crimes committed with intent to terrorize; causing bodily harm or threatening to cause bodily harm to a public officer or employee and threatening to damage the property of a public officer or employee; communicating with or harassing or intimidating jurors; threatening to cause bodily harm or property damage; providing or soliciting material support for acts of terrorism; money laundering; making false statements to financial institutions and the definition of personal identification document; prohibitions related to automatic weapons; theft of a firearm or a machine gun; interfering with disarmament of an explosive or a destructive device; crimes that may entail the interception of wire, electronic, or oral communication, interception of communications in emergency situations, roving electronic surveillance, and providing assistance to persons authorized to engage in electronic surveillance; grand jury authority; John Doe proceedings; court orders for disclosure of the existence of depository accounts with financial institutions; court orders for disclosure regarding subscribers of electronic communications services; access to license and identification card photographs; the procedure for making a legal name change; and providing penalties.

By Senators Baumgart, Darling and Roessler; cosponsored by Representatives Kaufert, Freese, Hahn, Hines, Jeskewitz, Ladwig, M. Lehman, Lippert, D. Meyer, Musser, Olsen, Ott, Owens, Petrowski, Ryba, Urban and Vrakas.

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

Senate Bill 364

Relating to: proclaiming Purple Heart Day.

By Senators Moen, Schultz, Breske, Rosenzweig, Erpenbach, Moore, Burke, Darling, Cowles, Grobschmidt, S. Fitzgerald, Roessler and Hansen; cosponsored by Representatives Musser, Gronemus, Kestell, Plouff, Nass, Sherman, Jeskewitz, Bock, Ladwig, Ryba, Boyle, Huber, Carpenter, Starzyk, Turner, Albers, Lassa, D. Meyer, Kreibich, Urban, Gundrum, Hahn, Hundertmark, Rhoades, Freese, Krawczyk, Coggs, Pettis, Miller, Vrakas, Steinbrink and Sykora, by request of Department of Wisconsin Military Order of the Purple Heart.

To committee on **Health, Utilities, Veterans and Military Affairs**.

Senate Bill 365

Relating to: nondisclosure of certain information on credit and debit card receipts.

By Senators Erpenbach, Hansen, Burke, Grobschmidt, Kanavas, Roessler and Harsdorf; cosponsored by Representatives Jeskewitz, Plouff, Powers, Ladwig, Starzyk, Lassa, Owens, J. Lehman, Rhoades, Cullen, J. Fitzgerald, Sinicki, Sykora, Hines, Ott, Gunderson, Townsend, Hahn, Musser, Montgomery, Pohan, Urban and Miller.

To committee on **Privacy, Electronic Commerce and Financial Institutions**.

Senate Bill 366

Relating to: a single registration plate for motor vehicles, local examining centers, grants to Brown County and municipalities, transfers from the transportation fund to the general fund, and making an appropriation.

By Senators Hansen and Cowles; cosponsored by Representatives Miller and Boyle.

To committee on **Insurance, Tourism, and Transportation**.

Senate Bill 367

Relating to: repealing, consolidating, renumbering, amending and revising various provisions of ss. [10.62](#) to [10.82](#) of the statutes for the purpose of correcting conflicts between the listings in ss. [10.62](#) to [10.82](#) and the substantive statutes to which those sections refer (Revisor's Correction Bill).

By Law Revision Committee.

To committee on **Universities, Housing, and Government Operations**.

Senate Bill 368

Relating to: numbering unnumbered subchapter titles in the statutes (Revisor's Revision Bill).

By Law Revision Committee.

To committee on **Universities, Housing, and Government Operations.**

Senate Bill 369

Relating to: amending and revising section 409.109 (1) (intro.) of the statutes for the purpose of reconciling conflicts and repelling unintended repeals (Revisor's Correction Bill).

By Law Revision Committee.

To committee on **Universities, Housing, and Government Operations.**

Senate Bill 370

Relating to: setting certain priorities that the higher educational aids board must observe in awarding loans under the nursing student loan forgiveness program and forgiveness of the principal and interest of a loan awarded under that program.

By Senators George, Robson and Grobschmidt; cosponsored by Representatives Morris-Tatum, Turner, Lassa, Walker, Carpenter, Miller, Plouff, Urban, Pettis, Underheim, La Fave and Staskunas.

To committee on **Universities, Housing, and Government Operations.**

REPORT OF COMMITTEES

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

Assembly Bill 30

Relating to: the issuance of wild turkey hunting licenses to qualified resident landowners.

Concurrence.

Ayes, 5 – Senators Baumgart, Hansen, Wirch, Cowles and Schultz.

Noes, 0 – None.

Senate Bill 219

Relating to: the billboard elimination grant program, prohibiting the erection of new billboards, requiring the exercise of rule-making authority, and making an appropriation.

Passage.

Ayes, 1 – Senator Baumgart.

Noes, 4 – Senators Hansen, Wirch, Cowles and Schultz.

Senate Bill 264

Relating to: prohibiting certain persons from obtaining licenses that authorize hunting with a firearm and providing a penalty.

Passage.

Ayes, 5 – Senators Baumgart, Hansen, Wirch, Cowles and Schultz.

Noes, 0 – None.

Senate Joint Resolution 30

Relating to: memorializing the U.S. Congress to provide funding for research on recycled lumber by the Forest Products Laboratory of the U.S. Department of Agriculture Forest Service.

Introduction and adoption of Senate substitute amendment 1.

Ayes, 5 – Senators Baumgart, Hansen, Wirch, Cowles and Schultz.

Noes, 0 – None.

Adoption as amended.

Ayes, 4 – Senators Baumgart, Hansen, Wirch and Schultz.

Noes, 1 – Senator Cowles.

Jim Baumgart
Chairperson

PETITIONS AND COMMUNICATIONS

**State of Wisconsin
Office of the Governor**

January 4, 2002

The Honorable, The Legislature:

As required by Article V, Section 6 of the Wisconsin Constitution, I am submitting the annual Executive Clemency report to the Legislature, covering those clemency cases upon which final dispositions were rendered for applicants during the calendar year 2001. The following applicants received full pardons or conditional pardons in 2001:

Aaron Foreman, convicted of Possession of THC with Intent to Deliver and sentenced on 6/21/91 to two years probation, nine months jail with Huber rights and a fine, recommended by the Governor's Pardon Advisory Board by a vote of 3-2 to be granted a pardon, was granted a pardon on January 10, 2001, because he is a productive member of society and otherwise deserving of extraordinary relief.

John Gonsalves, convicted of Battery to a Police Officer and sentenced on 6/30/75 to eighteen months probation, recommended by the Governor's Pardon Advisory Board by a vote of 5-0 to be granted a pardon, was granted a pardon on January 10, 2001, because he is a productive member of society and otherwise deserving of extraordinary relief.

Kenneth Rucker, convicted of Delivery of Controlled Substance and sentenced on 8/17/81 to three years prison (stayed), four years probation, ten weekends in jail, restitution and costs, recommended by the Governor's Pardon Advisory Board by a vote of 4-1 to be granted a pardon, was granted a pardon on January 10, 2001 (Conditional pardon to possess firearms that are discharged from the shoulder), because he is a productive member of society and otherwise deserving of extraordinary relief.

William Grosskreuz, convicted of Theft and Operating a Motor Vehicle without the Owner's Consent and sentenced on 8/18/58 to two years imprisonment on each count (concurrent), recommended by the Governor's Pardon Advisory Board by a vote of 5-0 to be granted a pardon, was granted a pardon on January 30, 2001, because he is a productive member of society and otherwise deserving of extraordinary relief.

Paul Karlen convicted of Theft by Fraud, Fraudulent Writing, and Forgery and sentenced on 5/13/91 to four months jail, twelve years probation and restitution, recommended by the Governor's Pardon Advisory Board by a vote of 4-0 to be granted a pardon, was granted a pardon on January 30, 2001, because he is a productive member of society and otherwise deserving of extraordinary relief.

David Krings, convicted of Delivery of a Controlled Substance was sentenced on 1/13/87 to two years probation and restitution, recommended by the Governor's Pardon Advisory Board by a vote of 5-1 to be granted a pardon, was granted a pardon on January 30, 2001, because he is a productive member of society and otherwise deserving of extraordinary relief.

Stephanie Taylor, convicted of Public Assistance Fraud and sentenced on 1/6/71 to a fine, recommended by the Governor's

Pardon Advisory Board by a vote of 4-0 to be granted a pardon, was granted a pardon on January 30, 2001, because she is a productive member of society and otherwise deserving of extraordinary relief.

Gregory Kelly, convicted of Battery and sentenced on 9/9/86 to two years imprisonment, recommended by the Governor's Pardon Advisory Board by a vote of 3-1 to be granted a pardon, was granted a pardon on January 30, 2001, because he is a productive member of society and otherwise deserving of extraordinary relief.

Jake Lasee, convicted of Possession of Cocaine with Intent to Deliver and sentenced on 9/19/97 to six months imprisonment (five months stayed) and three years probation, recommended by the Governor's Pardon Advisory Board by a vote of 3-1 to be denied a pardon, was granted a pardon on January 30, 2001 (effective February 1, 2011 and shall only become effective if there is no subsequent contact with the criminal justice system), because he is a productive member of society and otherwise deserving of extraordinary relief.

William Manthey, convicted of Misconduct in Office and sentenced on 8/18/92 to two years probation, recommended by the Governor's Pardon Advisory Board by a vote of 2-1 to be granted a pardon, was granted a pardon on January 30, 2001, because he is a productive member of society and otherwise deserving of extraordinary relief.

Bryan Morgan, convicted of Delivery of Marijuana and sentenced on 6/15/87 to three years probation, recommended by the Governor's Pardon Advisory Board by a vote of 5-0 to be granted a pardon, was granted a pardon on January 30, 2001, because he is a productive member of society and otherwise deserving of extraordinary relief.

Raymond Thomas, convicted of Delivery of Cocaine and sentenced on 3/10/86 to two years probation, recommended by the Governor's Pardon Advisory Board by a vote of 5-0 to be granted a pardon, was granted a pardon on January 30, 2001, because he is a productive member of society and otherwise deserving of extraordinary relief.

Duane Tracy, Sr., convicted of Breaking and Entering and sentenced on 1/17/62 to no more than eighteen months jail, recommended by the Governor's Pardon Advisory Board by a vote of 4-0 to be granted a pardon, was granted a pardon on January 30, 2001, because he is a productive member of society and otherwise deserving of extraordinary relief.

Ralph Goss, convicted of Burglary and sentenced on 4/30/58 to thirty months probation, restitution and suspension of driver's license, recommended by the Governor's Pardon Advisory Board by a vote of 6-0 to be granted a pardon, was granted a pardon on June 22, 2001, because he is a productive member of society and otherwise deserving of extraordinary relief.

Jerome Kososki, convicted of Breaking and Entering and theft and sentenced on 8/9/72 to three years probation, recommended by the Governor's Pardon Advisory Board by a vote of 6-0 to be granted a pardon, was granted a pardon on June 22, 2001, because he is a productive member of society and otherwise deserving of extraordinary relief.

Thomas Harder, convicted of Burglary and sentenced on 12/4/81 to thirty days jail and two years probation, recommended by the Governor's Pardon Advisory Board by a vote of 5-0 to be granted a pardon, was granted a pardon on August 23, 2001, because he is a productive member of society and otherwise deserving of extraordinary relief.

Gregory Schmidt, convicted on Burglary and sentenced on 5/11/70 to three years probation, recommended by the Governor's Pardon Advisory Board by a vote of 5-0 to be

granted a pardon, was granted a pardon on August 23, 2001, because he is a productive member of society and otherwise deserving of extraordinary relief.

Allan Weyer, convicted on Intentionally Taking and Carrying Away Moveable Property Without Consent and sentenced 7/27/77 to eighteen months probation, recommended by the Governor's Pardon Advisory Board by a vote of 5-0 to be granted a pardon, was granted a pardon on August 23, 2001, because he is a productive member of society and otherwise deserving of extraordinary relief.

Paul Oestrike, convicted of Burglary and sentenced in April of 1960 to probation, recommended by the Governor's Pardon Advisory Board by a vote of 4-0 to be granted a pardon, was granted a pardon on November 15, 2001, because he is a productive member of society and otherwise deserving of extraordinary relief.

Sincerely,

SCOTT MCCALLUM
Governor

**State of Wisconsin
Department of Revenue**

December 21, 2001

The Honorable, The Legislature:

Introduction

Section 565.45, Wisconsin Statutes, requires the Department of Revenue to submit a biennial report to the legislature regarding the impact on lottery operations of the 10% expense limitation under s. 25.75(3)(b).

Defining the Expenditure Limitation for Lottery Operations

Section 25.75(3)(b), Wisconsin Statutes, requires that expenses for the operation and administration of the lottery not exceed 10% of gross lottery revenues unless approved by the Joint Committee on Finance under s. 13.10.

Gross lottery revenues include gross revenues from the sale of lottery tickets and lottery shares under ch. 565 and retailer applications fees imposed under s. 565.10(8).

Expenses include:

1. amortization of capital expenditures;
2. payments to vendors under s. 565.25(2)(a) for on-line services and supplies;
3. operating expenses of the Department of Revenue under s. 20.566(2)(r)

Expenses exclude Department of Justice law enforcement expenses appropriated under s. 20.455(2)(r).

On-Line Vendor Fees

Effective June 15, 1997, a five-year contract with GTECH Corporation is in effect to determine on-line vendor fees. Under this contract on-line vendor fees are determined using a fixed base amount with an additional variable component amount that is based on sales.

Lottery General Program Operations

The accompanying chart illustrates administrative expenses, gross lottery revenues and the percentage of expenses of gross lottery revenues for Fiscal Year 1998 through 2001:

Summary

Total administrative expenditures as determined in accordance with Section 25.75(3)(b) in FY00 and FY01 were \$32,410,239 and \$33,579,382 respectively. These amounts represent 7.97% of gross lottery revenues for FY00 and 8.32% of gross lottery revenues for FY01. Amounts for both years are well within the 10% limitation imposed by Section 25.75(3)(b).

Sincerely,
 RICHARD G. CHANDLER
 Secretary of Revenue

**State of Wisconsin
 Claims Board**

January 2, 2002

The Honorable, The Senate:

Enclosed is the report of the State Claims Board covering the claims heard on December 7, 2001.

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,
 JOHN E. ROTHSCHILD
 Secretary

**STATE OF WISCONSIN CLAIMS BOARD
 The State Claims Board conducted hearings in the State Capitol, Grand Army of the Republic Memorial Hall, Madison, Wisconsin, on December 7, 2001, upon the following claims:**

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. Alicia Bowman	UWS	\$156.00
2. Patrick D. Horkan	Revenue	\$1,700.00
3. Willie J. Wilks	Revenue	\$10,439.19
4. Pastori M. Balele	Administration	\$1,033.00

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

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
5. Marquita Phillips	Revenue	\$2,158.00
6. James A. Mentek	Justice	\$1,022.23
7. Geoffrey T. Hermsen	Administration	\$354.66
8. Teck Trak/Terri L. Nielson	Administration	\$10,842.00
9. West Side Garage, Inc.	Transportation	\$2,579.34
10. James Cape & Sons, Co.	Transp.	\$1,483,781.60
11. Mary & Michael Brown	Transportation	\$88.12
12. Bryce Garrett	Corrections	\$157.80

In addition, the Board considered changing the payment funding source for the claim of Kenneth C. Ketterer, which was previously approved for payment from the Department of Revenue appropriation s. 20.566(1)(a), Stats., on September 21, 2001.

In addition, the Board considered a motion to refer the innocent convict claim (s. 775.05, Stats.) of Frederick Saecker to a hearing examiner.

The Board Finds:

1. Alicia Bowman of West Allis, Wisconsin claims \$156.00 for uninsured medical expenses related to a fall at the UW–Milwaukee Union. The claimant alleges that she approached a stairwell and saw a custodian mopping the landing below. She alleges that there were no “wet floor” or caution signs displayed. She states that she began to descend the stairs and slipped on the third step, falling down the stairwell and injuring her arm. She alleges that after the accident she

noticed drops of water on the steps, as though the custodian had carried a dripping mop down the stairs. She believes that this was what caused her fall. The claimant further states that when she returned to that area later in the day “caution, wet floor” signs had been placed at the top and bottom of the stairwell. The claimant believes that the UW custodian was negligent in not posting caution signs in the area, especially at the top of the stairwell.

The UW states that at the time of the incident, a custodian was mopping the landing between two flights of stairs. The UW alleges that the cart containing the mop bucket, marked with the words “wet floor,” was blocking the upper entryway to the stairwell and that another warning sign was posted just below the landing, near the lower stairwell. The UW alleges that the claimant had to move the mop cart out of the way to enter the stairwell. The UW also claims that she was wearing “flip-flop” shoes and carrying a large backpack, which may have contributed to her fall.

The Board concludes the claim should be paid in the amount of \$156.00 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)(h), Stats.

2. Patrick D. Horkan of Prairie du Sac, Wisconsin claims \$1,700.00 for Farmland Preservation Credit for the 1981 tax year. The claimant states that he was not able to get the appropriate form signed in time and that DOR therefore denied his Farmland Preservation Credit. The claimant believes that this money is rightfully his.

Because the tax year involved is so old, DOR records are very limited, however, DOR records do indicate a number of contacts with the claimant regarding this issue. According to the DOR’s information, the claimant filed his 1981 income tax return in May 1983. The DOR has no record indicating that the taxpayer ever filed a Schedule FC for his Farmland Preservation Credit. According to the Wisconsin Statutes, a 1981 FPC claim had to be filed by December 31, 1982. The DOR states that even if its records are incorrect and the claimant did file his Schedule FC with his 1981 return, the return was filed past the December 31, 1982, deadline and the claimant would therefore not be entitled to the FPC. According to the Department’s records, the claimant has contacted the DOR four times since 1984 requesting an explanation as to why he did not receive the credit. The DOR has responded to each inquiry, explaining the December 31, 1982 deadline.

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.

3. Willie J. Wilks of Waseca, Minnesota claims \$10,439.19 for return of funds levied from his bank account to satisfy estimated tax assessments for the years 1993 through 1996. The claimant states that he was incarcerated during this period and never received any notices from the DOR. He further states that he did not earn enough money to necessitate filing during most of those years. The claimant states that when he did complete his 1993 through 1996 taxes, he owed no taxes for those years.

The DOR states that the claimant failed to file personal income tax returns for the years 1993 through 1996. Estimated assessments were issued for these years. The DOR states that it requested income tax returns from the claimant based on the

fact that DOR records showed that he had received large interest payments indicating a filing obligation. The DOR states that the claimant failed to respond to multiple hearing notices over a four-year period. On November 17, 2000, the department levied the claimant's bank account and collected \$10,439.19 to satisfy the delinquent assessments. The claimant filed the taxes for the years in question in May 2001, with no tax due. The DOR is prohibited from refunding the overpayment by s. 71.75(5), Stats. All notices were sent to the address of the claimant's spouse. This house is owned jointly by the claimant and his wife. The claimant's spouse resides there and has been receiving the claimant's mail. The DOR, however, cannot verify that she actually forwarded the notices to the claimant. The DOR states that if the Claims Board feels this mitigates the circumstances, The DOR would not object to payment of the claim.

The Board concludes the claim should be paid in the reduced amount of \$5,000.00 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.

4. Pastori M. Balele of Madison, Wisconsin claims \$1,033.00 for return of monies garnished from his pay for costs associated with a court case filed by the claimant against the State of Wisconsin six years ago. The claimant alleges that the court judgment garnishing his wages for court costs was actually a void judgment and that the DOA therefore illegally garnished his wages. The claimant alleges that in-house copying and printing costs are not recoverable under state law and that the court was therefore not authorized to award these costs to the State of Wisconsin. He requests return of the \$1,033 garnished from his wages, plus the court filing fee.

The DOA states that the claimant provides no evidence that the judgment was void beyond his bald assertion to that effect. In *Weingerd v. Rinehart*, 114 Wis.2d 557 (Ct. of App. 1983), the Court held that a judgment is not void unless the court rendering it lacks subject matter or personal jurisdiction, or a party was denied due process of law. The Court further held that a party could waive any error that would form the basis for relief on a claim that a judgment is void. In *Wengerd*, failure to take subsequent action on a judgment for three years constituted a waiver. In this instance, the claimant was presented with a detailed bill of costs four and a half years ago. At that time, he had 10 days to file objections to those costs but did not do so. At any time between 1995 and the present, the claimant could have challenged the judgment but did not do so. The DOA believes that the claimant's failure to object, especially as his wages were being garnished more than five years ago, constitutes a waiver at this stage. The DOA believes that the claimant's claim is premature and that this is not the proper venue for him to object to the court judgment.

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 Rothschild not participating.*]

5. Marquita Phillips of Milwaukee, Wisconsin claims \$2,158.00 for return of 2000 income tax refund, which was taken to satisfy outstanding estimated assessments for the years 1990–1994. The claimant states that she never received any notice of the assessments. She states that she moved in late August 1996 and did not file a change of address notice with the

Post Office. She was then incarcerated from May 1997 until March 1999 and states she did not receive any notices regarding any tax delinquency during that time. Finally, the claimant points to the fact that she did not have any taxable income during the 1990–1994 period in question and therefore would not have owed any taxes for this period.

The DOR recommends that this claim be denied. DOR records indicate that estimated assessments were issued on June 24, 1996, for failure to file 1990 through 1994 income tax returns. The original assessments were mailed to the claimant and the Department has no record that these statements were returned as undeliverable. The first delinquent tax notice was sent to the claimant in early September 1996. The claimant provided the information necessary to adjust her account on July 25, 2001. Because this information was provided more than two years after the assessment date, the DOR is not able to issue a refund pursuant to s. 71.75(5), Stats.

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. [*Members Albers and Rothschild dissenting.*]

6. James A. Mentek, Jr. of Appleton, Minnesota claims \$1,022.23 for costs allegedly related to a lawsuit against the State of Wisconsin. The claimant states that, after erroneous rulings by the Circuit Court and Court of Appeals, his case was reversed by the Wisconsin Supreme Court, which ruled that the state had denied him meaningful judicial review by relying on a statute that was inapplicable to his case. The case was remanded back to the Circuit Court. The claimant states that he attempted to recover his costs associated with the suit but was denied costs by the Clerk of the Supreme Court. The claimant believes that since he won his case, he is entitled to recover the costs associated with bringing his lawsuit. The claimant agrees that there is a long-standing rule that litigants cannot recover costs from the state. However, the claimant states that s. 809.25(4), Stats., provides for costs “against the respondent before the Supreme Court when the judgment of the Court of Appeals is reversed...” The claimant believes that the word “respondent” is all inclusive and does not preclude the state. The claimant believes that the DOJ made unreasonable and unjustified arguments in his case and that he should be awarded his court costs.

The DOJ recommends that this claim be denied. The DOJ states that it is a long-standing rule that litigants are not entitled to recover costs from the state, even when they win and that departure from this rule could prove quite expensive. The DOJ points to the fact that the claimant is an aggressive prison litigator, who has sued the state a dozen times. The DOJ believes that the claimant would need little incentive to increase his pace. The DOJ believes that it made fair legal arguments in the claimant's case and that the reasonableness of the state's argument was supported by the fact that the state won in the Court of Appeals. The fact that the Supreme Court disagreed does not mean that the state's arguments were unreasonable.

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. Geoffrey T. Hermesen of Milwaukee, Wisconsin claims \$354.66 for medical bills related to an injury sustained at the Milwaukee State Office Building. The claimant states that he was approaching the building at 8:00 AM on September 6, 2000, when he slipped on some fresh grass clippings on the sidewalk. He states that he fell against the stairs and dislocated his shoulder. The accident was witnessed by several other people. The claimant requests reimbursement for his ambulance bill and ensuing medical treatment.

The DOA recommends payment of this claim. The DOA notes that there were grass clippings on the sidewalk in the area where the claimant fell and that the grass had been recently mowed. The DOA further notes that the pavement in the area was dry. The DOA believes that the grass clippings left on the walkway may have contributed to the claimant's accident and recommend that he be reimbursed for his medical expenses.

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. Terri Nielson d/b/a Tech Trak Consulting of Reedsburg, Wisconsin claims \$10,842.00 for damages allegedly related to the termination of a contract with the DOA. The claimant, through her company, entered into a contract with the DOA to provide technical writing services at a rate of \$39 per hour. The claimant states that the term of the contract was July 1, 1999 through June 30, 2000, and required the claimant to provide the DOA with up to 2,000 hours of technical writing services for a total of \$78,000. The claimant states that in mid May of 2000 the DOA informed her that the contract would be terminated on May 31, 2000. The claimant alleges that this termination was done without her consent and that she never requested to be relieved of her projects. She claims that she understood the contract as providing her with full-time work for one year and that she would not have entered into the contract had this not been the case.

The DOA recommends that this claim be denied. The DOA contends that, when construing the contract as a whole, it is clear that it was to be open-ended, depending on the need for and quality of the claimant's services. The DOA states that the purchase requisition, which in essence is the contract, followed standard purchasing requirements. The DOA points to the fact that the total cost of the contract is estimated based upon the potential hours at the hourly rate. The DOA states that this was obviously not a final, firm contract amount or it would not have been estimated. Moreover, the DOA states that if the contract had been for a fixed 2,000 hours/\$78,000, the DOA would not have paid the claimant by monthly invoice, as was the case in this instance. The DOA states that the claimant was paid on a monthly basis specifically in order to track the work performed and allow the DOA to review the work and, if necessary, terminate the contract at any time. Finally, the DOA states that the reason for the termination of the contract was the claimant's failure to perform her assignment after approximately 1700 hours of work under the contract. The DOA alleges that the claimant requested to be removed from the web-hosting project to which she was assigned. When notified that she was ceasing work on the project without finishing it, the DOA chose to terminate the claimant's services. The DOA states that the contract did not guarantee that the claimant would receive work

for the full 2,000 hours or that she would receive the absolute amount of \$78,000.

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 Rothschild not participating.]*

9. West Side Garage, Inc. of Berlin, Wisconsin claims \$2,579.34 for lost value of vehicle allegedly related to an error by DOT employees. The claimant received a 1999 pick up truck in trade, which was appraised for \$18,000. The Wisconsin Vehicle Title was not marked salvage. The claimant states that when it attempted to sell the vehicle, it was discovered that the vehicle had been previously titled in Missouri as salvage and that the salvage brand from the MO title was not carried forward to the new WI title issued by the DOT. The claimant has since sold the vehicle, and claims a loss of \$2,579.34.

The DOT recommends payment of this claim in the amount of \$2,579.34. After conducting an investigation of the claim, the DOT does find negligence on the part of its employee, Nancy Davis, for not carrying forward the Missouri salvage brand and instead issuing a clean Wisconsin title.

The Board concludes the claim should be paid in the amount of \$2,579.34 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)(cq), Stats.

10. James Cape & Sons, Inc. of Racine, Wisconsin claims \$1,483,781.60 for additional construction costs allegedly incurred on a DOT construction project. The claimant alleges that, after they began construction work, the DOT notified them that the DOT would not allow the claimant to use excavated material for trench backfill. The claimant alleges that this is contrary to their interpretation of the contract, which they claim does allow for use of excavated material as backfill. The claimant also alleges that the DOT failed to provide them with access to the right of way, as provided for in the contract, thereby causing a delay in the project. The claimant alleges that the DOT failed to ensure that existing power lines and railroad tracks were relocated so as to avoid any interference with the project, and that the claimant incurred additional costs as a result of the delays.

The DOT requests that this claim be denied. The DOT states that the contract specifications require that trenches be backfilled with granular backfill. The DOT states that the claimant is an experienced state contractor and was well aware that the state always requires the use of granular backfill in such situations. The DOT alleges that specific conversations with the claimant indicate that they were aware that they would need to use granular backfill in the project. The DOT also alleges that at a meeting in April 1995, an employee of the claimant specifically admitted that he bid the project as using granular backfill. The DOT states that the claimant did have access to the right of way and that the contract did not require the DOT to ensure that the existing power lines and railroad tracks be relocated so as to avoid interference with the progress of the project. The DOT states that the contract advised the claimant to contact utilities and required the claimant to utilize applicable and safe construction methods when working around utility lines.

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.

11. Michael & Mary Brown of Brookfield, Wisconsin claim \$88.12 for damage to tire allegedly caused by negligence of the DOT. The claimant states that at 10:30 PM on December 8, 2000, he was driving through a construction zone on Greenfield Avenue in Waukesha County. He states that there was a pole-style lane divider bent into his lane, which he had to swerve to avoid and that when he swerved, he hit a large pothole and damaged his tire and rim. The claimant states that he contacted the road contractor in charge of the project and was told that they would not pay the bill. He requests reimbursement for his tire damage.

The DOT recommends that this claim be denied. The DOT states that the area in which the accident occurred was at that time in a construction zone. The DOT states that all state construction contracts have a hold harmless agreement, which says that the contract will indemnify and save harmless the state from all claims brought because of damages received by any person on account of any act, omission, neglect or misconduct of the contractor. Therefore, the DOT believes that any responsibility to address claims of negligence resulting in damage rests with Zignego, Inc., the prime contractor on this project. The DOT finds no negligence on the part of any state employee.

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 further concludes that the claimants' remedy rests with the contractor, Zignego, Inc.

12. Bryce Garrett of Boscobel, Wisconsin claims \$157.80 for court costs incurred by the claimant. The claimant, an inmate at Supermax Correctional Institution, alleges that the DOC wrongly charged him with a violation of Wisconsin Administrative Code. The claimant appealed the discipline imposed on him, and filed a Writ of Certiorari in Dane County Circuit Court. The claimant states that Dane County Circuit Court reversed the decision of the DOC to discipline the claimant and ordered that the discipline be expunged from his correctional file. The claimant requests reimbursement for his court filing fee and the sheriff's fee to serve papers on the DOC. The claimant states that he will file two more lawsuits if the Claims Board does not pay this claim. He claims that the typical inmate lawsuit costs the state \$4,100 and believes that the board should pay the claim rather than have the state incur \$8,200 in lawsuit costs.

The DOC requests that this claim be denied. The claimant filed a motion for costs under s. 814.245(3), Wis. Stats., which the court denied, finding that the DOC was substantially justified in its position and that the claimant was therefore not entitled to costs. In addition, the DOC states that the claimant failed to serve the motion for costs on the assistant attorney general who represented the DOC in these matters. The DOC believes there is no legal basis to grant this claim. The claimant has not presented any reason why the Claims Board should ignore the circuit court decision or s. 814.25, Stats.

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.

Reconsideration of funding source for payment of claim of Kenneth C. Ketterer against the Department of Revenue.

On September 21, 2001, the Claims Board decided to pay the claim of Kenneth C. Ketterer against the Department of Revenue in the amount of \$4,221.92. The Board further indicated that this payment should be made from the Department of Revenue appropriation s. 20.566(1)(a), Stats. The Department of Revenue has requested that the Board reconsider their decision to pay the claim from DOR funds and instead consider paying the claim from the Claims Board appropriation s. 20.505(4)(d), Stats.

After reconsideration of the funding source for payment of the claim, the board declines to change its previous decision to pay the claim from the Department of Revenue appropriation s. 20.566(1)(a), Stats.

Consideration of motion to refer innocent convict claim of Frederick Saecker to a hearing examiner.

Frederick Saecker has filed an innocent convict claim under s. 775.05, Stats., with the Claims Board. Claims Board Chairperson, Alan Lee, has made a motion that the claim should be heard by a hearing examiner designated by the board, rather than by the entire Claims Board. The hearing examiner would conduct the hearing for the claim and would submit a proposed Findings of Fact and Decision to the Claims Board for their approval.

After consideration of the issue, the Board concludes that the claim of Frederick Saecker should be considered by a designated hearing examiner, who will then submit to the Board a proposed Findings of Fact and Decision for their approval.

The Board concludes:

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

- Patrick D. Horkan
- Pastori M. Balele
- Marquita Phillips
- James A. Mentek, Jr.
- Geoffrey T. Hermsen
- Terri Nielson/Tech Trak Consulting
- James Cape & Sons, Inc.
- Michael & Mary Brown
- Bryce Garrett

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

Alicia Bowman	\$156.00
Willie J. Wilks	\$5,000.00
West Side Garage, Inc.	\$2,579.34

3. The board declines to change its previous decision to pay the claim from the Department of Revenue appropriation s. 20.566(1)(a), Stats.

4. The Board concludes that the claim of Frederick Saecker should be considered by a designated hearing examiner, who will then submit to the Board a proposed Findings of Fact and Decision for their approval.

Dated at Madison, Wisconsin this 21st day of December 2001.

Alan Lee, Chair
Representative of the Attorney General

John E. Rothschild, Secretary
Representative of the Secretary of Administration
Chad Taylor
Representative of the Governor
Sheryl Albers
Assembly Finance Committee

**State of Wisconsin
University of Wisconsin System**

December 10, 2001

The Honorable, The Legislature:

The 2001-03 State of Wisconsin Biennial Budget, [1999 Wisconsin Act 9](#), included a provision to change the University of Wisconsin System's appropriation for tuition and fee revenues (Academic Student Fees, Fund 131) from an annual, sum certain appropriation to a continuing appropriation.

Wisconsin Act 9 required the Board of Regents to report annually, beginning on December 15, 2000, the amount by which actual expenditures in the previous fiscal year, in this case, 2000-2001, exceeded the amount in the schedule for that appropriation in the previous fiscal year. That report, including the purposes for which the additional revenues were spent and the amount spent for each purpose, is attached. The Board of Regents approved this report for submission at its December 7, 2001 meeting.

Please contact Freda Harris at (608) 263-5679, if you have any questions related to this report.

Sincerely,

DEBORAH A. DURCAN
Vice President for Finance

**State of Wisconsin
Joint Legislative Council**

December 6, 2001

The Honorable, The Senate:

I am pleased to transmit to you the following report to the 2001 Legislature on legislation introduced by the Joint Legislative Council:

- RL 2001-01 Legislation on recodification of Operating While Intoxicated and Safety Laws Pertaining to Motor Vehicle, All-Terrain Vehicle, Boat or Snowmobile Operation (2001 Assembly Bill 667 and Senate Bill 335)
- (2001 Assembly Bill 668 and Senate Bill 336)
- (2001 Assembly Bill 669 and Senate Bill 337)
- (2001 Assembly Bill 670 and Senate Bill 338)

I would appreciate your including this letter in the journal for the information of the membership. Additional copies of this report are available at the Legislative Council Staff Offices, One East Main, Suite 401, or from our web site at http://www.legis.state.wi.us/lc/reports_by_topic.htm.

Sincerely,

TERRY C. ANDERSON
Director

**State of Wisconsin
Joint Legislative Council**

December 11, 2001

The Honorable, The Senate:

I am pleased to transmit to you the following report to the 2001 Legislature on legislation introduced by the Joint Legislative Council:

- RL 2001-10 Legislation recommended by the Special Committee on Use of Prescription Drugs for Children (2001 Assembly Bill 672)

I would appreciate your including this letter in the journal for the information of the membership. Additional copies of this report are available at the Legislative Council Staff Offices, One East Main, Suite 401, or from our web site at http://www.legis.state.wi.us/lc/reports_by_topic.htm.

Sincerely,

TERRY C. ANDERSON
Director

**State of Wisconsin
Department of Natural Resources**

December 27, 2001

The Honorable, The Legislature:

Sec. 292.65(3)(3e) requires that no later than January 1, 2002, the Department of Natural Resources shall complete a review of the Dry Cleaner Environmental Response Fund Program and submit a report on the results of that report to the Joint Committee on Finance and to the appropriate standing committee of the legislature as determined by the speaker of the House and the president of the Senate. Attached is that report for your information and review. This report also contains an addendum by the Governor's Council on the Dry Cleaner Environmental Response Fund Program, as part of their required program review.

If you have any questions on this program or this report, please contact me at 267-7569.

Sincerely,

ROBIN SCHMIDT
Bureau for Remediation and Redevelopment

Referred to committee on **Environmental Resources**.

Ice Age Park & Trail Foundation

December 20, 2001

The Honorable, The Senate:

In 1999 the State Legislature included a \$75,000 annual grant in the state budget to be matched with \$25,000 of private funds for the purpose of establishing, maintaining and promoting the Ice Age National and State Scenic Trail. The Ice Age Park and Trail Foundation (IAPTF) was delighted to be the recipient of that grant in 2000 and 2001. It is with a great deal of pride that I submit our final report for the year 2001, as required by statute s. [23.295](#).

The protection, development and management of the Ice Age Trail is dependent on partnerships. The Trail's primary partners, including the National Park Service, Wisconsin Department of Natural Resources and IAPTF, work closely with county governments and other municipalities and with local volunteers from around the state. In 2000 alone, over 4,882 volunteers provided an "in kind" match of 60,323 hours spent in support of the trail. When translated into dollars their contribution equals almost \$900,000 annually – really quite extraordinary.

The grant from the DNR has allowed IAPTF to:

Support the work of volunteers who develop, maintain and promote the Ice Age Trail.

Build partnerships for the Ice Age Trail area with local governmental units and nonprofit organizations.

Promote the protection of a corridor for the Ice Age Trail by providing information about acquiring land, or an interest in land in the corridor.

Strengthen community support for the Ice Age Trail area by recruiting and training volunteers and by coordinating the activities of interest groups.

Promote tourism in the Ice Age Trail area.

We genuinely appreciate your continuing support and your true partnership. Please call me at 414-278-8518 with any questions you may have.

Sincerely,

CHRISTINE THISTED
Executive Director

ADVICE AND CONSENT OF THE SENATE

**State of Wisconsin
Office of the Governor**

December 21, 2001

The Honorable, The Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint ALBERT, PHILIP E., of Madison, as Secretary of the Department of Commerce, to serve for the term ending at the pleasure of the Governor.

Sincerely,

SCOTT MCCALLUM
Governor

Read and referred to committee on **Economic Development and Corrections.**

**State of Wisconsin
Office of the Governor**

December 21, 2001

The Honorable, The Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint KUSSART, GENE, of Verona, as Secretary of the Department of Transportation, to serve for the term ending at the pleasure of the Governor.

Sincerely,

SCOTT MCCALLUM
Governor

Read and referred to committee on **Insurance, Tourism, and Transportation.**

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

Senate Clearinghouse Rule 01-062

Relating to public employee safety and health.

Submitted by Department of Commerce.

Report received from Agency, January 3, 2002.

Referred to committee on **Universities, Housing, and Government Operations**, January 8, 2002.

Senate Clearinghouse Rule 01-126

Relating to mobile home park permit fees.

Submitted by Department of Commerce.

Report received from Agency, January 8, 2002.

Referred to committee on **Universities, Housing, and Government Operations**, January 8, 2002.

**State of Wisconsin
Revisor of Statutes Bureau**

January 1, 2002

To the Honorable, the Senate:

The following rules have been published:

Clearinghouse Rules	Effective Date(s)
00-179	July 1, 2002
01-020	January 1, 2002
01-026	January 1, 2002
01-027	January 1, 2002
01-034	January 1, 2002
01-044	January 1, 2002
01-053	January 1, 2002
01-060	January 1, 2002
01-064	January 1, 2002
01-082	January 1, 2002
01-083	January 1, 2002
01-096	January 1, 2002

Sincerely,

GARY L. POULSON
Deputy Revisor

The committee on **Health, Utilities, Veterans and Military Affairs** reports and recommends:

Senate Clearinghouse Rule 00-184

Relating to telecommunications utilities price regulation.

No action taken.

Senate Clearinghouse Rule 01-073

Relating to operation of the health insurance risk-sharing plan (HIRSP).

No action taken.

Senate Clearinghouse Rule 01-089

Relating to the rights of patients to make telephone calls.

No action taken.

Senate Clearinghouse Rule 01-091

Relating to examinations for original licensure and for persons licensed in another state.

No action taken.

Senate Clearinghouse Rule 01-101

Relating to examination, education, continuing education, reciprocity requirements and unprofessional conduct.

No action taken.

Senate Clearinghouse Rule 01-105

Relating to control of communicable diseases.

No action taken.

Senate Clearinghouse Rule 01-116

Relating to licensing of emergency medical technicians-intermediate and approval of emergency medical technician-intermediate operational plans.

No action taken.

Rodney Moen
Chairperson

The committee on **Human Services and Aging** reports and recommends:

Senate Clearinghouse Rule 00-020

Relating to foster home care for children.

No action taken.

Senate Clearinghouse Rule 01-106

Relating to early intervention services for children with developmental needs in the age group from birth to 3.

No action taken.

Judith Robson
Chairperson

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

Senate Clearinghouse Rule 01–113

Relating to the community development block grant program.

No action taken.

Mark Meyer
Chairperson

Senate Bill 145

Relating to: employment relations for members of the University of Wisconsin System faculty and academic staff.

Referred to joint committee on **Finance** pursuant to Senate Rule 41(1)(e).

Senate Bill 150

Relating to: the election campaign fund designation on individual income tax returns.

Referred to joint committee on **Finance** pursuant to Senate Rule 41(1)(e).

Senate Bill 333

Relating to: merger and conversion of business entities, exemptions from securities registration requirements and licensing requirements for securities broker–dealers and securities agents, registered agents for business entities, filing of documents relating to certain business entities, administrative dissolution of business entities, amended certificates of authority for certain foreign business entities, granting rule–making authority, and making an appropriation.

Referred to joint committee on **Finance** pursuant to Senate Rule 41(1)(e).

AMENDMENTS OFFERED

Senate substitute amendment 1 to **Senate Bill 221** offered by Senator Baumgart.

Senate amendment 1 to **Senate Bill 287** offered by Senator George.

**Motions Under Senate Rule 98 and Joint Rule 7
for the Month of December 2001**

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Grobschmidt, for Danielle Baerwald, on the occasion of being chosen as “Outstanding Restaurateur of the Year”.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Cowles, for Luke Beno, 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 Richard Dimpfel, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Legislature on the motion of Senator Decker, for Kraft Foods Medford Facility, on the occasion of on the opening of the Medford Buffer Warehouse.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Panzer, for Daniel F. Kryst, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Roessler, for Rick and Pat Miller, on the occasion of being chosen by the Lake–to–Lake Chapter of the Wisconsin Restaurant Association as the Outstanding Restaurateur of the Year for 2001.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Kanavas, for David Nesseth, 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 Kanavas, for Eric Nesseth, 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 Risser, for Dr. Bernice Owen, on the occasion of her retirement from the University of Wisconsin School of Nursing.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Harsdorf, for the River Falls FFA Team: Joe Jensen, Kyle Killian, Brad Peterson, Phil Rohl and Coach DeWayne Benedict, on the occasion of winning the National Championship in Agriculture Mechanics at the 74th annual convention.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Cowles, for Neal Sannes, 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 Lasee, for Matthew Schleis, 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 Ellis, for Darrell and Donna Schultz, on the occasion of celebrating their 50th Wedding Anniversary shared with family and friends.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Moore, for Rev. Gabriel Lee Shaw, Sr. and Mary H. Shaw, on the occasion of their years of service to St. Gabriel Church of God In Christ.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Chvala, for Lynn Sherman, on the occasion of her dedication to the State Medical Society.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Darling, for Elliott Siebers, 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 George, for Cha Vang, on the occasion of his time, effort and dedication to improving the lives of all in the South East Asian community.

A certificate of commendation by the Wisconsin Senate on the motion of Senator George, for Dr. Pobzeb Vang, on the occasion of his time, effort and dedication to improving the lives of all in the South East Asian community.

JOURNAL OF THE SENATE [January 8, 2002]

A certificate of commendation by the Wisconsin Senate on the motion of Senator Darling, for R. Wallace Watson, on the occasion of his 40 years of service towards making a difference in the lives of young adults through the Boys & Girls Club.

on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Roessler, for Brian Zink,