



STATE OF WISCONSIN

Senate Journal

Ninety–Sixth Regular Session

10:00 A.M.

TUESDAY, October 21, 2003

The Senate met.

The Senate was called to order by Senator Charles Chvala.

The Chair, with unanimous consent, asked that the proper entries be made in the journal.

CHIEF CLERK'S ENTRIES

The Chief Clerk makes the following entries dated **Thursday, October 16, 2003**.

The joint committee on **Finance** reports and recommends:

Assembly Bill 259

Relating to: eligibility for participation in the Milwaukee Parental Choice Program.

Concurrence.

Ayes, 12 – Senators Darling, Welch, S. Fitzgerald, Lazich, Harsdorf and Kanavas. Representatives Kaufert, Huebsch, Ward, Stone, Rhoades and D. Meyer.

Noes, 4 – Senators Decker and Moore. Representatives Coggs and Pocan.

Assembly Bill 260

Relating to: extending the Milwaukee Parental Choice Program to all private schools in Milwaukee County.

Concurrence.

Ayes, 12 – Senators Darling, Welch, S. Fitzgerald, Lazich, Harsdorf and Kanavas. Representatives Kaufert, Huebsch, Ward, Stone, Rhoades and D. Meyer.

Noes, 4 – Senators Decker and Moore. Representatives Coggs and Pocan.

Assembly Bill 261

Relating to: charter schools located in a 1st class city school district.

Concurrence.

Ayes, 12 – Senators Darling, Welch, S. Fitzgerald, Lazich, Harsdorf and Kanavas. Representatives Kaufert, Huebsch, Ward, Stone, Rhoades and D. Meyer.

Noes, 4 – Senators Decker and Moore. Representatives Coggs and Pocan.

Senate Bill 219

Relating to: eligibility for participation in the Milwaukee Parental Choice Program.

Passage.

Ayes, 12 – Senators Darling, Welch, S. Fitzgerald, Lazich, Harsdorf and Kanavas. Representatives Kaufert, Huebsch, Ward, Stone, Rhoades and D. Meyer.

Noes, 4 – Senators Decker and Moore. Representatives Coggs and Pocan.

Senate Bill 220

Relating to: charter schools located in a 1st class city school district.

Passage.

Ayes, 12 – Senators Darling, Welch, S. Fitzgerald, Lazich, Harsdorf and Kanavas. Representatives Kaufert, Huebsch, Ward, Stone, Rhoades and D. Meyer.

Noes, 4 – Senators Decker and Moore. Representatives Coggs and Pocan.

Alberta Darling
Senate Chairperson

Senate Bill 214

Relating to: carrying or going armed with a concealed weapon, requiring the exercise of rule-making authority, making appropriations, and providing penalties.

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

The Chief Clerk makes the following entries dated **October 17, 2003** :

Senate amendment 1 to **Assembly Bill 519** offered by Senator Kedzie.

The Chief Clerk makes the following entries dated **October 20, 2003** :

The joint committee on **Finance** reports and recommends:

Assembly Bill 472

Relating to: the Milwaukee Parental Choice Program income limit.

Concurrence.

Ayes, 12 – Senators Darling, Welch, S. Fitzgerald, Lazich, Kanavas and Moore. Representatives Kaufert, Huebsch, Ward, Stone, Rhoades and D. Meyer.

Noes, 3 – Senator Carpenter. Representatives Taylor and Pocan.

Assembly Bill 486

Relating to: periods in which state agencies will act on certain applications, approval of certain applications, refunds of fees, and granting rule-making authority.

Introduction and adoption of Senate Substitute Amendment 1.

Ayes, 12 – Senators Darling, Welch, S. Fitzgerald, Lazich, Harsdorf and Kanavas. Representatives Kaufert, Huebsch, Ward, Stone, Rhoades and D. Meyer.

Noes, 4 – Senators Moore and Carpenter. Representatives Taylor and Pocan.

Concurrence as amended.

Ayes, 12 – Senators Darling, Welch, S. Fitzgerald, Lazich, Harsdorf and Kanavas. Representatives Kaufert, Huebsch, Ward, Stone, Rhoades and D. Meyer.

Noes, 4 – Senators Moore and Carpenter. Representatives Taylor and Pocan.

Assembly Bill 503

Relating to: the enrollment of the charter school established by the University of Wisconsin–Parkside.

Concurrence.

Ayes, 12 – Senators Darling, Welch, S. Fitzgerald, Lazich, Kanavas and Moore. Representatives Kaufert, Huebsch, Ward, Stone, Rhoades and D. Meyer.

Noes, 3 – Senator Carpenter. Representatives Taylor and Pocan.

Assembly Bill 520

Relating to: the method of calculating technology zone tax credits and the certification of businesses under the technology zone program.

Concurrence.

Ayes, 16 – Senators Darling, Welch, S. Fitzgerald, Lazich, Harsdorf, Kanavas, Moore and Carpenter. Representatives Kaufert, Huebsch, Ward, Stone, Rhoades, D. Meyer, Taylor and Pocan.

Noes, 0 – None.

Senate Bill 248

Relating to: the method of calculating technology zone tax credits and the certification of businesses under the technology zone program.

Passage.

Ayes, 16 – Senators Darling, Welch, S. Fitzgerald, Lazich, Harsdorf, Kanavas, Moore and Carpenter. Representatives Kaufert, Huebsch, Ward, Stone, Rhoades, D. Meyer, Taylor and Pocan.

Noes, 0 – None.

Senate Bill 252

Relating to: Joint Committee on Finance review of stewardship acquisitions.

Introduction and adoption of Senate Amendment 1.

Ayes, 11 – Senators Darling, Welch, S. Fitzgerald, Harsdorf and Kanavas. Representatives Kaufert, Huebsch, Ward, Stone, Rhoades and D. Meyer.

Noes, 4 – Senators Moore and Carpenter. Representatives Taylor and Pocan.

Passage as amended.

Ayes, 11 – Senators Darling, Welch, S. Fitzgerald, Harsdorf and Kanavas. Representatives Kaufert, Huebsch, Ward, Stone, Rhoades and D. Meyer.

Noes, 4 – Senators Moore and Carpenter. Representatives Taylor and Pocan.

INTRODUCTION, FIRST READING AND REFERENCE OF PROPOSALS

Read and referred:

Senate Bill 279

Relating to: qualifications of certain agents of mortgage bankers and mortgage brokers, consumer mortgage brokerage agreements, granting rule-making authority, and providing a penalty.

By Senators Schultz, S. Fitzgerald, Kanavas, Lazich, Wirch, Lassa, Breske, Plale, M. Meyer, Stepp, Kedzie and

Roessler; cosponsored by Representatives Jeskewitz, Montgomery, Ladwig, Gunderson, Wieckert, Freese, Kreibich, Bies, Seratti, M. Lehman, Hines, Kerkman, Kestell, Loeffelholz, Shilling, Vrakas, Van Roy, J. Fitzgerald, Wasserman, Nischke, Krawczyk, Hahn, Townsend, Zepnick, LeMahieu and Olsen.

To committee on **Agriculture, Financial Institutions and Insurance.**

Senate Bill 287

Relating to: multiple municipal local health departments in Milwaukee County.

By Senators Lazich, Darling, Kanavas, Reynolds and Welch; cosponsored by Representatives Stone, Gundrum, Krusick, Jensen, Kerkman, Seratti, Jeskewitz, Gunderson, Musser, McCormick, LeMahieu, Hines, Hundertmark, Hahn, Ladwig, Gielow, Albers, Petrowski, Bies, Staskunas, Gottlieb, Nass, Krawczyk, Vrakas and F. Lasee.

To committee on **Homeland Security, Veterans and Military Affairs and Government Reform.**

Senate Bill 288

Relating to: defined network plan coverage of prosthetic and orthotic devices.

By Senators Roessler and Plale; cosponsored by Representatives Albers, Hahn, Hines, Berceau, Musser and J. Lehman.

To committee on **Agriculture, Financial Institutions and Insurance.**

Senate Bill 289

Relating to: civil liability exemption for claims resulting from weight gain and obesity.

By Senators Reynolds, S. Fitzgerald, Zien, Breske, Harsdorf, Kanavas, Lazich, Leibham, Roessler and Schultz; cosponsored by Representatives Vrakas, Gundrum, Gronemus, Albers, Bies, J. Fitzgerald, Friske, Gottlieb, Grothman, Gunderson, Hahn, Hines, Honadel, Hundertmark, Jeskewitz, Kestell, Krawczyk, Kreibich, Ladwig, F. Lasee, M. Lehman, LeMahieu, McCormick, Montgomery, Musser, Nass, Nischke, Olsen, Ott, Pettis, Petrowski, Schneider, Seratti, Stone, Suder, Towns, Townsend, Van Roy, Ward, Weber, M. Williams, J. Wood, Young, Zepnick and Ziegelbauer, by request of Wisconsin Restaurant Association.

To committee on **Labor, Small Business Development and Consumer Affairs.**

Senate Bill 290

Relating to: increasing funding for local youth apprenticeship grants, increasing positions for the Governor's Work-Based Learning Board, and making appropriations.

By Senators Wirch, Erpenbach, Moore, Hansen, Plale, Breske, M. Meyer, Lassa, Schultz and Risser; cosponsored by Representatives Van Akkeren, Vruwink, Ainsworth, Powers, Kreuser, Krug, Young, Hebl, Boyle, Zepnick, Schooff, Sherman, Miller, Richards, Sinicki, Berceau, Black, Pope–Roberts, Shilling, Hahn, Van Roy and Pocan.

To committee on **Labor, Small Business Development and Consumer Affairs.**

Senate Bill 291

Relating to: Legislative Council staff director attendance at certain midwest and national meetings in which the Commission on Uniform State Laws participates (suggested as remedial legislation by the Legislative Council staff).

By Law Revision Committee.

To committee on **Homeland Security, Veterans and Military Affairs and Government Reform.**

Senate Bill 292

Relating to: creating a nonrefundable individual income tax credit for certain adoption expenses and prohibiting new claims for the adoption expenses income tax deduction.

By Senators Reynolds, Lassa, Stepp, Roessler, Wirch and Carpenter; cosponsored by Representatives Freese, Musser, Hahn, Ainsworth, Kreibich, Bies, Gundrum, Hines, Gunderson, W. Wood, Lothian, Vrakas and Hundertmark.

To joint survey committee on **Tax Exemptions.**

Senate Bill 293

Relating to: consecutive monthly registration of certain vehicles used exclusively to transport calcium chloride liquid.

By Senators Breske, Schultz and A. Lasee; cosponsored by Representatives Musser, Hines, Hahn, Lothian, Gronemus, Grothman, Seratti and Albers.

To committee on **Transportation and Information Infrastructure.**

REPORT OF COMMITTEES

The committee on **Homeland Security, Veterans and Military Affairs and Government Reform** reports and recommends:

Assembly Bill 195

Relating to: tax warrants and liens on property.

Concurrence.

Ayes, 5 – Senators Brown, Zien, S. Fitzgerald, Wirch and Breske.

Noes, 0 – None.

Assembly Bill 251

Relating to: designating public depositories for the payment of property taxes.

Concurrence.

Ayes, 5 – Senators Brown, Zien, S. Fitzgerald, Wirch and Breske.

Noes, 0 – None.

Assembly Bill 50

Relating to: sheriff's fees established by the county.

Introduction and adoption of Senate Amendment 1.

Ayes, 5 – Senators Brown, Zien, S. Fitzgerald, Wirch and Breske.

Noes, 0 – None.

Concurrence as amended.

Ayes, 5 – Senators Brown, Zien, S. Fitzgerald, Wirch and Breske.

Noes, 0 – None.

Assembly Bill 54

Relating to: the sale of tax delinquent real property.

Concurrence.

Ayes, 5 – Senators Brown, Zien, S. Fitzgerald, Wirch and Breske.

Noes, 0 – None.

Assembly Bill 70

Relating to: modifying the definition of income under the homestead tax credit.

Concurrence.

Ayes, 5 – Senators Brown, Zien, S. Fitzgerald, Wirch and Breske.

Noes, 0 – None.

MAROTTA, MARC, of Mequon, as Secretary of the Department of Administration, to serve for the term ending at the pleasure of the Governor.

Confirmation.

Ayes, 5 – Senators Brown, Zien, S. Fitzgerald, Wirch and Breske.

Noes, 0 – None.

Ronald Brown
Chairperson

The committee on **Judiciary, Corrections and Privacy** reports and recommends:

Assembly Bill 372

Relating to: live birth or the circumstance of being born alive.

Concurrence.

Ayes, 5 – Senators Zien, S. Fitzgerald, Stepp, George and Carpenter.

Noes, 0 – None.

David Zien
Chairperson

PETITIONS AND COMMUNICATIONS

**State of Wisconsin
Department of Administration**

October 10, 2003

The Honorable, The Legislature:

This report presents statements of fund condition and operations (budgetary basis) of the State of Wisconsin for the fiscal year ended June 30, 2003. This satisfies the requirements of sec. 16.40(3), Wisconsin Statutes. Displayed are major sources of revenues and major categories of expenditures for the General Fund and other funds compared to the prior year.

The General Fund has an undesignated balance of -\$282.2 million as of the end of the fiscal year. This is \$1.412 million better than the balance of -\$283.6 million projected in [2003 Act 1](#). The improvement in the balance was the result of lower than expected tax revenues offset by lower than expected spending.

General-purpose revenue taxes were \$10.2 billion compared to \$10.02 billion in the prior year, an increase of \$179.5 million or 1.8 percent. This increase was \$23.8 million below the Legislative Fiscal Bureau January 2003 estimate of \$10.224 billion. General-purpose revenue expenditures, excluding fund transfers, were \$11.033 billion compared to \$11.259 billion in the prior year, a decrease of \$226.5 million or 2.0 percent.

In fiscal year 2003, the State of Wisconsin continued to devote the major share of state tax collections to assistance to local school districts, municipalities and counties. Local assistance accounted for 58.4 percent of total general purpose revenue spending. Aid payments to individuals and organizations represented 17.4 percent of total general purpose revenue expenditures. The University of Wisconsin accounted for 9.5 percent of total general purpose revenue spending and state operations for all other state agencies accounted for 14.7 percent of the total.

The State of Wisconsin expects to publish its comprehensive annual financial report in December of 2003. The report will be prepared under generally accepted accounting principles.

Sincerely,

MARC J. MAROTTA
Secretary

WILLIAM J. RAFTERY, CPA
State Controller

**State of Wisconsin
Department of Administration**

September 25, 2003

The Honorable, The Legislature:

This report is transmitted as required by sec. 20.002(11)(f) of the Wisconsin Statutes, (for distribution to the appropriate standing committees under sec. 13.172(3) Stats.), and confirms that the Department of Administration has found it necessary to exercise the "temporary reallocation of balances" authority provided by this section in order to meet payment responsibilities and cover resulting negative balances during the month of August 2003.

On August 1, 2003, the **Information Technology Investment Fund** cash balance closed at its monthly low of a negative \$1.0 thousand. This negative balance continued until August 21, 2003, when the balance closed at zero. The negative balance was due to the difference in the timing of revenues and expenditures.

On August 1, 2003, the **General Fund** cash balance closed at a negative \$664.6 million. The negative balance continued through August 31, 2003, when the fund cash balance closed at a negative \$400.5 million. The General Fund closed at an intramonth low of a negative \$757.3 million on August 13, 2003.

On August 12, 2003, the **Agricultural Chemical Cleanup Fund** cash balance closed at its monthly low of a negative \$22.0 thousand. This negative balance continued until August 15, 2003, when the balance closed at a positive \$10.0 thousand. The negative balance was due to the difference in the timing of revenues and expenditures.

On August 15, 2003, the **Tobacco Settlement Endowment Fund** cash balance closed at its monthly low of a negative \$3.7 million. This negative balance continued until August 19, 2003, when the balance closed at a zero. The negative balance was due to the difference in the timing of revenues and expenditures.

The Information Technology Investment Fund, the General Fund, the Agricultural Chemical Cleanup Fund, and the Tobacco Settlement Fund shortfalls were not in excess of the statutory interfund borrowing limitation and did not exceed the balances of the funds available for interfund borrowing.

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

Sincerely,

MARC J. MAROTTA
Secretary

Referred to the joint committee on **Finance**.

**State of Wisconsin
Department of Justice**

October 14, 2003

The Honorable, The Senate:

The Senate Committee on Organization ("Committee") has requested my opinion concerning the application of two recent Wisconsin Supreme Court decisions to requests under the Wisconsin public records statute, Wis. Stat. ss. 19.31-19.39, for mailing or distribution lists of physical or street addresses, e-mail addresses or phone numbers compiled and used by individual legislators for official business. Because lists of street addresses and phone numbers must ordinarily be coupled with an individual name in order to be meaningful or useful, I assume that the Committee's questions refer to the individual's name as well.

The Committee poses a series of questions that may fairly be summarized as follows:

1. Wisconsin Stat. s. 19.35(1)(a) provides in relevant part: "Except as otherwise provided by law, any requester has a right to inspect any record." Are legislators' mailing or distribution lists "records" which must be disclosed to the public if requested pursuant to Wis. Stat. s. 19.35(1)(a)?
2. Assuming the record custodian determines that such lists are subject to disclosure, must the persons whose addresses or telephone numbers are contained on the list be provided with the notice required by the *Woznicki* and *Teachers' Ed. Ass'n* cases and given an opportunity to challenge the release in court prior to actual release of the record?

Under current law, the first question can only be answered by the courts after applying the common law balancing test articulated in *State ex rel. Youmans v. Owens*, 28 Wis. 2d 672, 137 N.W.2d 470, 139 N.W.2d 241 (1965) and succeeding cases. Based on current Wisconsin precedent, however, it is my opinion that the courts would conclude that the records must be disclosed, unless the custodian, applying the balancing test, articulates specific factual circumstances warranting a determination that the public interest in withholding the records outweighs the public interest in releasing them. With regard to the second question, in my opinion the answer is no because neither the Legislature nor the Wisconsin courts have extended the *Woznicki* notice procedure beyond the context of employee records.

The Committee's questions arise in the context of recent requests, directed to individual legislators, for copies of e-mail distribution lists compiled by those legislators for the purpose of distributing electronic newsletters to constituents and other private citizens. Accordingly, I limit my discussion and answers to the Committee's questions to the context of legislators' mailing or distribution lists containing addresses or phone numbers of private citizens.

Plainly, lists of names and street or e-mail addresses and phone numbers, compiled by individual legislators and used for official purposes, are "records" within the coverage of the public records statute. See Wis. Stat. s. 19.32(2); *Hathaway v. Green Bay School Dist.*, 116 Wis. 2d 388, 393-94, 342 N.W.2d 682 (1984). The statute clearly states the general presumption that all public records are open to the public. *Wis. Newspress v. Sheboygan Falls Sch. Dist.*, 199 Wis. 2d 768, 776, 546 N.W.2d 143 (1996). There are no blanket exceptions to the presumption of openness, except for those created by statute or by the common law. *Id.* at 780.

Absent a statutory or common law exception, a balancing test must be applied in every case in order to determine whether a particular record should be released. *Id.*; *Woznicki*, 202 Wis. 2d at 183. Under the common law balancing test, the record custodian and, if necessary, the court must determine whether the public interest in disclosure is outweighed by the public

interest in keeping the record confidential. *See Osborn v. Board of Regents*, 2002 WI 83, 254 Wis. 2d 266, ¶ 14, 647 N.W.2d 158.

There is no common law exception for lists of names, addresses and phone numbers, nor is there a general statutory exception in the public records statute limiting the release of such personal identifying information as names, street addresses, telephone numbers or e-mail addresses. In fact, at least one statute, Wis. Stat. § 19.71, clearly contemplates that lists of names and addresses are subject to disclosure under the public records statute. That statute, entitled "sale of names or addresses," provides: "An authority may not sell or rent a record containing an individual's name or address of residence, unless specifically authorized by state law. *The collection of fees under s. 19.35(3) is not a sale or rental under this section.*" The italicized language makes clear that disclosure of names and street addresses under the public records statute is *not* a "sale or rental" prohibited under Wis. Stat. § 19.71, clearly implying that such information is generally available under the public records law.

Moreover, the existence of specific statutes expressly limiting the release of "personal identifiers," including names, telephone numbers and street and e-mail addresses, in particular circumstances strongly supports the inference that there is no general statutory exception that would justify maintaining the confidentiality of legislators' mailing and distribution lists. For example, under a newly enacted statutory exception to the public records statute itself, home addresses, home telephone numbers and home e-mail addresses of state employees may not be disclosed by an agency authority unless the employee authorizes access to this personal information. *See 2003 Wisconsin Act 47*, sec. 7, creating Wis. Stat. s. 19.36(10)(a) (effective August 26, 2003). A full interpretation of the newly created exceptions to disclosure set forth in Wis. Stat. s. 19.36(10)(a) is beyond the scope of this opinion. However, statutory exceptions must be narrowly construed and this new exception is plainly limited to information compiled by an "employer" in relation to an "employee." *See id.* Accordingly, there is no basis for a claim that the new exception set forth in Wis. Stat. s. 19.36(10)(a) covers information relating to private citizens compiled and maintained by legislators in their capacity as elected officials. *See also*, Wis. Stat. s. 23.45, created by 1999 Wisconsin Act 88 (regulating disclosure of certain computer-generated lists by the Department of Natural Resources).

Furthermore, Wis. Stat. s. 895.50, creating a statutory right of privacy in Wisconsin, provides no direct support for a claim that individual privacy interests foreclose release of legislators' mailing and distribution lists. Rather, Wis. Stat. s. 895.50(2)(c) cautions that "[i]t is *not* an invasion of privacy to communicate any information available to the public as a matter of public record." Instead, the "protection of privacy and reputational interests . . . plays an integral role" in the application of the common law balancing test itself. *See Woznicki*, 202 Wis. 2d at 202 (Abrahamson, J., dissenting).

Thus, whether lists of street or e-mail addresses and phone numbers compiled by legislators must be disclosed under the Wisconsin public records statute depends on application of the balancing test. *See Youmans*, 28 Wis. 2d at 682; *Woznicki*, 202 Wis. 2d at 183–84. It is, therefore, incumbent upon the custodian of the records in the first instance to balance all interests of the public bearing on both sides of the calculus, both those favoring disclosure and those opposing disclosure. Nonetheless, current Wisconsin precedent offers some guidance on how the courts are likely to resolve the question whether legislators' mailing and distribution lists are public records that must be disclosed.

Street Addresses. In Wisconsin, there is considerable precedent requiring disclosure of lists of names and street addresses under the public records law, absent a statutory exception or a particularized demonstration of the need to maintain confidentiality in the specific case. In *Hathaway*, for example, the supreme court held that a computer-generated list of names and addresses of parents with children enrolled in the school district had to be disclosed to the requester because the custodian had failed to state specific, sufficient reasons to the contrary. *Id.*, 116 Wis. 2d at 404. *See also* 68 Op. Att'y Gen. 68 (1979) (mailing lists compiled by the Department of Natural Resources subject to inspection and copying); 61 Op. Att'y Gen. 297 (1972) (waiting lists for vocational school programs). *Cf. Atlas Transit, Inc. v. Korte*, 2001 WI App 286, 249 Wis. 2d 242, 638 N.W.2d 625 (public's right to know names and commercial driver's license numbers of all bus drivers transporting children for the Milwaukee School District outweighed "slight invasion" of drivers' privacy from release of that information).

Although some Wisconsin cases have upheld limitations on the release of home addresses of public employees even before the creation of Wis. Stat. s. 19.36(10)(a), these cases illustrate the need for a particularized showing that the public interest supports withholding the records. *See, e.g., Morke v. Record Custodian*, 159 Wis. 2d 722, 465 N.W.2d 235 (Ct. App. 1990) (list of names, addresses and phone numbers of prison employees withheld from disclosure based on the institution's interest in ensuring safety inside and outside the prison boundaries and in encouraging persons to serve as prison employees); *State ex rel. Journal/Sentinel, Inc. v. Arreola*, 207 Wis. 2d 496, 558 N.W.2d 670 (Ct. App. 1996) (trial court order releasing records relating to the use of deadly force by police officers modified to require redaction of the individual officers' home addresses based on privacy interests and public safety concerns). *Cf. U.S. Dept. of State v. Ray*, 502 U.S. 164, 176 n.12 (1991) (emphasizing that disclosure of a list of names and other identifying information is not inherently or necessarily a significant threat to the privacy of the individuals on the list; the significance or insignificance of the threat to privacy depends upon the characteristics revealed by virtue of being on the particular list and the consequences likely to ensue).

Home Telephone Numbers. There is a less well-developed body of precedent on the question whether lists of home telephone numbers are subject to disclosure under the public records statute. However, *Morke* demonstrates that personal telephone numbers can be withheld under the balancing test based upon a particularized showing of possible harm to the public interest, including concern for safety and institutional security. *Id.*, 159 Wis. 2d at 726–27. *See generally State ex rel. Pflaum v. Psych. Examining Bd.*, 111 Wis. 2d 643, 646, 331 N.W.2d 614 (Ct. App. 1983) (in affirming discovery order requiring disclosure of names, addresses and phone numbers of particular individuals, the court observed that disclosure did not implicate those persons' constitutional right to privacy); *cf. Wisconsin Professional Police Ass'n v. PSC*, 205 Wis. 2d 60, 70 n.6, 555 N.W.2d 179 (Ct. App. 1996) (citing factual evidence to support commission finding that there is no general societal expectation or norm that a person placing a telephone call has the right to remain anonymous).

E-mail addresses. It is fair to say that courts and legislatures are currently struggling to apply existing statutes, including public records and freedom of information statutes, to the exploding technology of the Internet. At this juncture, there are no Wisconsin cases directly addressing whether a distribution list of e-mail addresses may be withheld from disclosure under the public records law based on concern for the privacy rights of those persons to whom the e-mail addresses belong, nor has our research discovered any cases from other jurisdictions that

analyze the issue. *Cf.* n.2, above, citing *Reno*, 521 U.S. at 855 n.20.

Furthermore, courts in other jurisdictions appear to treat privacy concerns with differing degrees of respect, depending on whether the basis for the claimed right of privacy is statutory or constitutional. In Wisconsin, however, the statutory right of privacy does not directly affect the duties of record custodians based on Wis. Stat. s. 895.50(3). Assuming the courts treat e-mail address lists consistently with the lists of names, street addresses and telephone numbers, it is likely that disclosure of e-mail distribution lists will be required, absent a specific statutory exception or a showing of particularized harm to the public interest from release of such records. *Cf. Morke*, 159 Wis. 2d at 726–27.

The Committee has also asked about the application of the *Woznicki* and *Teachers' Ed. Ass'n* cases to the mailing and distribution lists at issue here, assuming the record custodian determines that such lists are subject to disclosure in the first instance. In those cases, the Wisconsin Supreme Court has held that a public employee has the right to be notified and to seek judicial review of a custodian's decision to disclose information that may implicate the privacy or reputational interests of that employee. *See Woznicki*, 202 Wis. 2d at 192–95 (records held by the district attorney); *Teachers' Ed. Ass'n*, 227 Wis. 2d at 782, 798–99 (extending *Woznicki* remedy to all cases implicating the privacy or reputational interests of an individual public employee, "regardless of the identity of the record custodian").

As restated above, the Committee's second question is whether the *Woznicki* and *Teachers' Ed. Ass'n* remedy applies to release of mailing and distribution lists compiled by legislators for purposes of communicating with constituents and other private citizens. Based on 2003 Wisconsin Act 47, sec. 4, creating Wis. Stat. s. 19.356, enacted since the Committee requested my opinion on this issue, the answer to this question is clearly no. Wisconsin Stat. s. 19.356 represents the legislative response to the *Woznicki* and *Teachers' Ed. Ass'n* cases and is expressly intended to limit and clarify the scope of the remedy created in *Woznicki*. *See generally* Note of the Joint Legislative Council following 2003 Wisconsin Act 47, sec. 4.

Under newly created Wis. Stat. s. 19.356(2)(a), an authority is required to provide "record subjects," *see* Wis. Stat. s. 19.32(2g), created by 2003 Wisconsin Act 47, sec. 1, with written notice of a decision to release records in only three defined circumstances, two of which relate directly to the employment context. *See* Wis. Stat. s. 19.356(2)(a)1. and 3. The remaining instance in which notice is now required is limited to records obtained by an authority pursuant to a subpoena or a search warrant. *See* Wis. Stat. s. 19.356(2)(a)2. Moreover, the statute now expressly provides that notice is *not* required and that no person is entitled to judicial review of a decision to provide access to a record "[e]xcept as authorized in this section or as otherwise provided by statute." Wis. Stat. s. 19.356(1). Plainly, therefore, the new statute does not require that a *Woznicki*-type notice be provided in the case of a legislator's decision to release mailing or distribution lists.

I note as well that the limitations in the new statute, Wis. Stat. s. 19.356(2), are consistent with post-*Woznicki* precedent, which did not extend the notice requirement beyond the context of privacy or reputational interests of public employees or employees of public contractors. *See Kraemer Brothers, Inc. v. Dane County*, 229 Wis. 2d 86, 599 N.W.2d 75 (Ct. App. 1999); *Atlas Transit*, 249 Wis. 2d 242.

I conclude, therefore, that if a legislator custodian decides that a mailing or distribution list compiled and used for official purposes must be released under the public records statute, the persons whose names, addresses or telephone numbers are

contained on the list are not entitled to notice and the opportunity to challenge the decision prior to release of the record.

Sincerely,
PEGGY A. LAUTENSCHLAGER
Attorney General

**State of Wisconsin
Claims Board**

October 15, 2003

The Honorable, The Senate:

Enclosed is the report of the State Claims Board covering the claims heard on September 26, 2003.

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 at the State
Capitol Building in Madison, Wisconsin, on September 26,
2003, upon the following claims:**

| <u>Claimant</u> | <u>Agency</u> | <u>Amount</u> |
|-----------------------------|--|-----------------|
| 1. Steve R. Scheel | Agriculture, Trade & Consumer Protection | \$85.95 |
| 2. Spencer & Alvern Calvert | Revenue | \$3,995.59 |
| 3. Daniel Erkkila | Revenue | \$5,000.00 |
| 4. Lawrence & Irene Frisch | Revenue | \$380.00 |
| 5. Shivette M. Griffin | Corrections | \$635.55 |
| 6. Bruce M. Mohs | Justice | \$12,726,000.00 |
| 7. Pastori M. Balele | Corrections | \$5,000.00 |

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

| <u>Claimant</u> | <u>Agency</u> | <u>Amount</u> |
|------------------------------|-----------------|---------------|
| 8. Linda Kilgore | Corrections | \$8,578.89 |
| 9. Mary Converse-Turner | Corrections | \$40.00 |
| 10. Federal Liaison Services | Revenue | \$2,601.18 |
| 11. Rosa Lee Williams | Revenue | \$252.00 |
| 12. Joyce Gulbranson | State Fair Park | \$178.64 |

The Board Finds:

1. Steve R. Scheel of Marshall, Wisconsin claims \$85.95 for cost of replacing milk gaskets, which was allegedly incurred because of inappropriate behavior by a DATCP inspector. The claimant alleges that during a routine inspection at his dairy farm on Thursday, July 11, 2002, a DATCP inspector pointed out that the gaskets in the milk receive jar were dirty. The claimant states that he informed the inspector that the dairy supply company was coming for a regularly scheduled visit the following Monday, July 15, and that he would have the gaskets replaced at that time without incurring the additional visit charge. The claimant alleges that the inspector told him that he could not wait until July 15 and had to replace the gaskets by the next day or she would cut him off

from the Grade A market. The claimant called the supply company and had the gaskets replaced the next day. The claimant does not believe the inspector had the right to give him only one day to replace the gaskets. He also believes that the inspector should have made note of the gasket issue on her inspection report, but she did not. The claimant requests payment of the \$85.95 cost to replace the gaskets and also requests interest on that amount from July 11, 2002.

DATCP recommends denial of this claim. During the July 11 inspection, DATCP's inspector found the claimant's receiver jar gaskets dirty and in poor repair. The claimant told the inspector that he would have the gaskets replaced on July 15. DATCP alleges that, based on the claimant's voluntary compliance to replace the gaskets on July 15, the inspector did not list the problem on the July 11 inspection report and did not issue any Notice of Intent to Suspend the claimant's license. DATCP states that the cost of replacing receiver jar gaskets is a routine business expense relating to maintaining equipment. DATCP therefore does not feel the state should reimburse the claimant for these costs.

The Board concludes the claim should be paid in the reduced amount of \$70.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Agriculture, Trade & Consumer Protection appropriation s. 20.115(1)(a), Stats.

2. Spencer and Alvern Calvert of Deforest, Wisconsin claim \$3,335.59 for overpayment of income taxes. Spencer Calvert's wages were certified by DOR in order to satisfy an estimate assessment for 1995 income taxes. The claimant states that he had a very difficult time obtaining copies of his old W2 forms because two of his former employers were out of business. He also states that he had a difficult time getting information from the Social Security Administration and that they told him his requests were not a priority. The claimant states that, because of these delays, he did not get copies of his W2s until 2002 and that, in the meantime, DOR garnisheed his wages. The claimant alleges that once the judgment was satisfied and the garnishment was complete, DOR told him that he would receive a refund. The claimant believes that the delay in getting this matter resolved was the fault of the Social Security Administration and that he should be refunded his \$3,995.59 overpayment.

DOR recommends denial of this claim. In March and July of 1999 DOR sent letters to Mr. Calvert requesting that he file a 1995 income tax return. DOR issued an estimated assessment for the 1995 taxes on January 17, 2000. The claimants filed an appeal of the assessment on March 14, 2000. On April 18, the claimants submitted information to DOR but it was insufficient to adequately resolve the issue. At that time, Mr. Calvert told DOR that he had submitted a 1995 return. DOR informed him that there was no record of any 1995 return and again requested that he submit a copy of the return. DOR also notified him that failure to respond within 30 days would result in the denial of his appeal. DOR did not receive any reply to this letter and issued a notice of denial of the appeal on June 26, 2000. DOR records indicate that between October 2000 and November 2002, the claimant and/or his representatives phoned DOR several times. DOR responded by sending additional copies of the assessment and explaining several times what the claimant needed to submit in order to resolve the matter. DOR states that it is unable to retrieve W2 information which it receives from employers. DOR initiated certification of Mr. Calvert's wages. The certification was suspended twice in order to give the claimants additional time to obtain the required information, only to have the deadlines pass each time without DOR receiving the requested documents. DOR records indicate that the claimants submitted a copy of Mr.

Calvert's 1995 social security income statement on January 22, 2002, which was within the two-year statute of limitations. On October 2, 2002, Mr. Calvert filed his 1995 income tax return as a full year WI resident, showing a net tax liability of \$1350. If the claimant had filed his 1995 return in a timely fashion, he would have received a \$216 refund. Section 71.75(5), Stats. prohibits DOR from refunding the claimants' \$3,995.59 overpayment since no refund was claimed within the prescribed two year time period. The statute of limitations for requesting this refund expired on June 26, 2002. The claimants would have been within the new four-year statute of limitations if it had applied to their claim.

The Board concludes the claim should be paid in the amount of \$3,995.59 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Revenue appropriation s. 20.566 (1)(a), Stats.

3. Daniel Erkkila of Superior, Wisconsin claims \$5,000.00 for money garnisheed to pay allegedly overdue income tax returns. The claimant states that all taxes for the years in question were filed with H & R Block. The claimant alleges that when DOR contacted him, he tried to resolve the matter by phone but that the personnel at DOR were not helpful and would not explain to him how to fix the problem. The claimant states that DOR garnisheed over \$10,000 from his wages, which caused him great financial hardship, including losing his apartment because he could not afford to pay his rent. Finally, the claimant states that he did not owe anywhere near the amount that was taken from his checks and he believes that DOR should reimburse him for the overpayment.

DOR recommends denial of this claim. DOR records indicate that on August 4, 2000, DOR sent a mailed request to the claimant that he file WI income tax returns for 1995 through 1998. DOR sent this request in response to information from the IRS that showed the claimant had filed his 1999 federal return using a WI address (a 1999 WI tax return was also filed). DOR did not receive any response from the claimant to this request and therefore issued an estimated assessment on October 9, 2000, which was due December 11, 2000. On February 7, 2001, at an informal hearing, the claimant phoned and promised to file the returns by March 9, 2001. However, in April 2001 DOR only received copies of the claimant's 1995 federal and MN returns. DOR sent the claimant another letter explaining the need for a completed residency questionnaire and copies of the 1996-1998 returns. Because the claimant failed to do so, DOR began certifying his wages in July 2001. DOR records show that, beginning in August 2001, the claimant would phone the department and DOR would again explain to him what was needed to resolve the account. DOR did not receive the required information until March 16, 2003. Based on this information, DOR determined that the claimant was not a WI resident for 1995 and 1996, that he owed WI taxes of \$1073 for 1997 and that his income was below the filing requirement in 1998. DOR disputes the claimant's allegation that DOR personnel were unresponsive and uncooperative. DOR's case notes for the file show that with each and every contact, DOR employees fully explained to the claimant what was required to resolve the issue. Finally, because the two-year statute of limitations for filing a claim for refund of overpayment expired on October 9, 2002, section 71.75(5) prohibits DOR from making any refund to the claimant.

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 neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

4. Lawrence and Irene Frisch of Antigo, Wisconsin claim \$380.00 for 2001 Homestead Tax Credit. The claimants

state that their accountant filed their 2001 taxes electronically. The claimants had four properties that were eligible for homestead credit. The claimants believe that in the process of the electronic filing, information about three of the properties was lost. On August 15, the claimants received a letter from DOR requesting the missing information. The claimants state that they called their accountant, who mailed the requested information to DOR on September 1. The claimants state that neither they nor their accountant received any response from DOR for several months but that they did not believe there was any problem. In early October, the claimants received their refund check without any homestead credit. They called their accountant, who again mailed the appropriate information to DOR on October 8 and faxed the information to DOR on October 15. The claimants state that another four months went by, but that, due to previously delays, neither they nor their accountant believed the delay was the result of any problem with their information. In March 2003 the claimants received a letter stating that because they had not timely appealed DOR's October 8 letter, the denial of their homestead credit was final. The claimants state that they never received any notice explaining the appeal process. The claimants state that their accountant sent the requested material to DOR three times, twice by mail and once by fax and they believe they are due their homestead credit.

DOR recommends denial of this claim. DOR received the claimants' electronic returns on July 31, 2002. On August 15, DOR wrote the claimants requesting the form required to be mailed when an income tax return and homestead credit claim are electronically filed (Form 8453W) and other documents. DOR states that it received no response to this request and therefore denied the homestead credit claim. The October 8 refund check included notice of the claimants' appeal rights (the notice and the refund check are part of one perforated document.) The appeal explanation specifically indicated that the claimants were required to appeal in writing and explain the reasons for objection and that they had 60 days from receipt of the notice to appeal. DOR states that it did not receive any letter of objection/appeal within the 60-day time limit. DOR also states that there is no record of receipt of a fax appeal either (though DOR does not accept faxed appeals). On March 13, 2003, DOR received a faxed copy of DOR's August 15 letter, the Frisch's property tax bills and form 8453W dated April 15, 2002. DOR replied by letter dated March 17 that because the claimants had not filed a timely appeal, the homestead denial was final. DOR was subsequently contacted and asked the claimants to show exactly what they allegedly submitted in response to the October 8 notice. Ms. Eckerman submitted an original, handwritten note with an original signed form 8453W and copies of four property tax bills. No letter of appeal or reasons for objection were submitted. DOR states that it is extremely unusual for an accountant to file an appeal by just submitting documents with no cover letter or explanation. DOR states that this was the first year which allowed electronic filing of homestead credit. DOR states that the computer program is set up to only attach one property tax statement to the electronic file and that any additional statements are supposed to be received as separate electronic files.

The Board concludes the claim should be paid in the amount of \$380.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Revenue appropriation s. 20.566 (1)(a), Stats.

5. Shivette Griffin of Deerfield, Wisconsin claims \$635.55 for vehicle damage. The claimant is employed as a Program Support Supervisor at a Probation and Parole office in Madison. She states that she parks her vehicle in a lot behind the building provided for DOC staff. She states that on May 15,

2003, at approximately 11:00 a.m., while she was conducting business away from the office, she went to plug her parking meter and noticed that her vehicle had been damaged. There was a fist-sized dent just below the passenger side window. The claimant states that this damage was not present the day before or that morning before arriving to work. She also states that other employees who park in the lot behind her building had vehicle damage occur around the same time. The claimant has insurance coverage for the damage, but requests reimbursement for her \$250 deductible and the gas she purchased for the rental vehicle she had to use while her car was being repaired.

DOC recommends that this claim be denied. According to the documentation submitted by the claimant, it appears that this vehicle damage is the result of a random act of vandalism. DOC points to the fact that the claimant neither asserts nor provides any proof that the damage was done by a DOC employee or agent. DOC states that at all times relevant to this matter, the claimant was solely responsible for the care, custody and control of her vehicle. The claimant has not provided any allegation or documentation showing that DOC was somehow responsible for this vandalism nor has she provided any proof of where and when the damage occurred. DOC believes the claimant has made an insufficient showing of negligence on the part of DOC, its officers, agents or employees and that there is no legal or equitable basis for payment of this claim.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

6. Bruce B. Mohs of Verona, Wisconsin claims \$12,726,000.00 for various damages allegedly related to a lawsuit brought by Century 21 Real Estate Corporation of California. The claimant alleges that it was not legal for Century 21 to bring suit against him because Century 21's parent company, TWA, had not filed a Certificate of Authority. The claimant believes that this violates section 180.1501, Stats., and that the courts should not have allowed the lawsuit by Century 21. The claimant states that the lawsuit and ensuing appeals and related litigation have caused great harm to his career over the course of over 30 years. The claimant states that the issue of the legality of Century 21's suit was not raised because he did not know about the statute. The claimant alleges that because of the lawsuit, he was forced to declare bankruptcy and claims \$12,726,000 in damages for lost business, homes, vehicles and stock. The claimant requests reimbursement for these losses.

DOJ recommends denial of this claim. The claimant asserts that the State of Wisconsin, through the courts, conducted an "illegal trial" allegedly in violation of s. 180.1501 – 180.1505, Stats. DOJ states that there is no legal basis for the claimant's claim. DOJ states that sections 180.1501–180.1505, Stats., do not require that parent companies of subsidiaries obtain authorization to do business in the state before the subsidiary is allowed to bring an action in state court. DOJ states that the only requirement is that the corporation that is the actual plaintiff obtain such authorization before taking civil action in Wisconsin's courts. Century 21, a Delaware corporation, received this authorization to do business in WI in 1973, long before its 1984 lawsuit against the claimant. DOJ states that the claimant has had a full and fair opportunity to litigate this matter in the courts. DOJ believes that any legal errors that may have occurred in the initial lawsuit could and should have been raised by the claimant in his ensuing appeals. DOJ believes that the claimant has failed to demonstrate any causal relationship between the court's decision to allow

Century 21 to pursue its case against him and the claimant's bankruptcy. Finally, DOJ states that it is not at fault for any of the claimant's losses and that the claimant has shown no causal link between his alleged damages and DOJ.

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 neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles. [*Member Lee not participating.*]

7. Pastori M. Balele d/b/a JMB-JOBS of Madison, Wisconsin claims \$5,000.00 for loss of a contract with DOC allegedly due to racism. The claimant states that his company, JMB-JOBS was the lowest bidder responding to a DOC Request for Bid to provide nursing services at Oregon and Thompson Correctional Centers. The claimant states that Mary Burke, a DOC Purchasing Agent, sent him a contract to sign for these two facilities and that he signed the contract and returned it to DOC. The claimant states that he then emailed the superintendents at both centers asking for the names of any nursing employees who would be laid off due to the change in contract. The claimant states that he was told that there was only one employee, named Brenda. The claimant states that he contacted Brenda to offer her employment with JMB-JOBS and alleges that she was very excited by his offer and wanted to work for JMB-JOBS. The claimant states that shortly after his conversation with Brenda, Ms. Burke emailed him telling him to stop contacting employees at the centers. Several days later, the claimant contacted Brenda to formalize her employment. He alleges that Brenda told him she did not want to work for him because DOC procurement personnel had told her it was almost certain that he would not be getting the contract. The claimant believes that the only people who could have made these statements to Brenda would be Ms. Burke and Helen McCain, another DOC procurement official. The claimant alleges that Ms. McCain and Ms. Burke deliberately tried to sabotage his contract because he is African-American. Ms. McCain and Ms. Burke are Caucasian and the claimant believes that they did not want Brenda, who is also Caucasian, to be employed by an African-American. The claimant states that he was the low bidder and should have received the contract. He requests payment of \$5,000 compensation.

DOC recommends denial of this claim and believes that the claimant's allegations of racial discrimination are without merit. DOC states that Ms. Burke sent the claimant a letter indicating that DOC would award the two contracts to him if he submitted required documentation. The requested documents included the resumes, professional licenses, conviction records and liability insurance for each proposed service provider he would provide under the contract. The claimant responded that he intended to hire Brenda, who already worked for DOC, and that DOC therefore already had her records. Ms. McCain sent the claimant two additional emails stating that he needed to submit the requested information in order to be awarded the contracts. Ms. McCain also extended the deadline for submitting this information. Several days before the deadline, the claimant faxed insurance information, which proved to be insufficient. He did not submit any of the other required documents. DOC also states that Nurse Brenda was never discouraged from working for JMB-JOBS by Ms. McCain, Ms. Burke, or any other DOC employee. Nurse Brenda contacted DOC with concerns about the contract and was only informed that no vendor had been selected. Finally, DOC points to the fact that the claimant is a former DOA Bureau of Procurement employee, with 18 years of experience dealing with state procurement policies and procedures and therefore should have been well able to understand DOC's requests. DOC believes it has been clear

concerning its requests for required documents and that the claimant has chosen to ignore those requests and make false accusations instead of providing the required information.

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 neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

8. Linda Kilgore of Cameron, Wisconsin claims \$8,578.89 for vehicle and property damage allegedly related to her employment as a Probation and Parole Agent with DOC. The claimant states that she served one of her offenders with revocation papers, at which time he threatened her. The revocation hearing was scheduled for 9:00 a.m. on July 12, 2002. Around 3:00 a.m. on July 11, 2002, someone propped a lit propane torch under the gas tank of claimant's vehicle, which was parked in the driveway of her residence. The ensuing explosion and fire destroyed the vehicle and various personal items stored in the car, a tree and five bushes, damaged the driveway, and caused smoke damage to the home. An individual named Scott Ristow is suspected in the crime. The claimant states that Mr. Ristow has strong connections to Loren Purinton, the offender scheduled for revocation on July 12. The claimant believes that Mr. Purinton arranged the arson in retaliation for his revocation. The claimant received a settlement payment of \$5,164.25 from her homeowner's insurance, but alleges that her actual damages totaled \$13,743.14. The claimant states that she accepted the insurance payment under protest because she had to purchase a replacement vehicle for her family because the vehicle destroyed was their only car and they do not have access to public transportation. The claimant believes that the connection between Mr. Ristow and Mr. Purinton proves that this arson was a direct result of her actions as a Probation and Parole Agent and believes that DOC should reimburse her for her uninsured damages.

DOC recommends denial of this claim and believes the claimant has already been properly compensated by her insurer. DOC points to insurance payments as follows: 1) Claim for tree removal – \$472. Insurance payment \$450.00. 2) Claim for driveway replacement – \$5058.00. The claimant's insurer limited payment to replacement of the actual damaged portion of the driveway, not the entire driveway as claimant claimed. The insurer paid the claimant \$1160 to replace the damaged part of the driveway. 3) Claim for replacement trees and bushes – \$2321. The cost of replacing the destroyed bushes, \$1500, was completely covered by the claimant's insurance. Replacement of the destroyed tree was limited to \$500, per the claimant's policy. Total insurance payment for tree and bush replacement was \$2150. 4) Claim for pressure wash of roof, soffit and driveway – \$890. The claimant's insurance payment included \$1016.25 for "additional subcontractor allowances and labor allowances" which DOC believes would include these costs. 5) Claim for rake, hose, degreaser – \$18.59. The claimant's insurer also included a \$120 payment to reimburse the claimant for her personal efforts to clean her property, which DOC believes would include these costs. 6) Claim for personal property in automobile – \$483. The claimant's insurance reimbursed her \$268 for personal property destroyed along with her automobile, however, vehicle floor mats and the 30 cassette tapes allegedly destroyed were not covered pursuant to the claimant's insurance policy. 7) 94 Mercury Cougar – \$4500 Blue Book value. According to the claimant's documentation, she had no insurance on the vehicle. DOC believes that this is a very unfortunate incident but that the claimant has been appropriately reimbursed. Since the crime remains under investigation and no charges have been filed, no definitive proof exists to clearly link the incident to the

claimant's employment. Finally, DOC states that even were such a link eventually established, it is the person responsible for the crime who should be held accountable for the claimant's damages and she could seek payment under Chapter 949, Wis. Stats.

The Board concludes that this claim is not timely as the claimant has not exhausted other possible remedies through either prosecution of the party responsible for the damages or through the Crime Victims Compensation Fund. The Board therefore declines to render a decision on this claim until the claimant has pursued these other avenues of relief.

9. Mary Converse–Turner of Green Bay, Wisconsin claims \$40.00 for uninsured medical costs allegedly related to an accident in a DOC van. The claimant states that on November 7, 2002, she was invited to go to lunch with a group of DOC employees. While getting into a DOC van, the claimant caught her fingers in the door. She states that her fingers were bent and bleeding and she put them in ice water shortly after the accident. The claimant further states that one of the employees in the group suggested that she get her fingers x-rayed, so the claimant called her insurance company and was told she should go to urgent care. The claimant states that she stopped at the urgent care clinic at St. Vincent Hospital on her way home from work and that it was not until she later received a bill from the hospital that she found out her costs were not fully covered. She called her insurance company and was told that she should have gone to urgent care at a DePere clinic. The claimant believes that she should be compensated for her costs because the accident happened in a state vehicle. The claimant points to the fact that if someone injured himself or herself on her property, she would be financially responsible, regardless of whether or not she was at fault.

DOC recommends denial of this claim for two reasons. DOC states that it is the claimant's responsibility to know what her insurance company will cover and at what locations she can seek treatment. DOC believes that it bears no responsibility for the claimant going to the wrong medical facility. In addition, neither the claimant nor the DOC employees should have been using the DOC van for personal reasons. The claimant was not attending a DOC function and therefore should not have been in the van at all. For these reasons, DOC believes the claimant is responsible for her loss.

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 neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

10. Federal Liaison Services of Dallas, Texas claims \$2,601.18 for interest charged because of electronic tax payments incorrectly sent to the Wisconsin DOR. The claimant is the third party tax processor for Acuity Specialty Products Group, Inc. Acuity was set up for electronic filing for Louisiana income tax withholding. When the electronic filing was set up in July 2002, an incorrect routing and state account number was used for Acuity's payments. Due to this error, Acuity's payments were sent to the State of Wisconsin instead of Louisiana. The claimant states that they were unaware of the error because DOR never informed them they were receiving the payments. It was not until March 26, 2003, when the Louisiana Department of Revenue sent assessments for unpaid taxes, that the claimant was aware of the error. The claimant contacted DOR and the incorrect payments were returned, however, Louisiana is charging interest on the late payments. The claimant believes that DOR should have notified them that they were receiving incorrect payments and requests compensation for the \$2601.18 in interest due to Louisiana.

DOR recommends denial of this claim. There was no requirement for the claimant's client to pay Wisconsin taxes,

however, payments were received by WI DOR through and electronic payment set-up which incorrectly contained Wisconsin's bank numbers rather than Louisiana's. DOR states, however, that it is not unusual for them to receive funds for unregistered accounts. Such funds are deposited to a holding account until resolved and it can take several months to research and attempt to register taxpayers in such cases. DOR therefore believes that it had no reason to believe the funds were incorrectly received. DOR states that it is unfortunate that the claimant was unaware of the error for seven months and that Louisiana did not notify them within that time. However, DOR states that because it was not responsible for either the computer error or the delay in notification, the claim should be denied.

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 neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

11. Rosa Lee Williams of Racine, Wisconsin claims \$252.00 for 2001 Homestead Tax Credit that was disallowed by DOR. The claimant states that she filled out several homestead credit forms but that her credit was incorrectly disallowed by DOR. She states that her mother, who lived in Mississippi, became ill and later died. The claimant states that she was staying in Mississippi during her mother's illness and she therefore put the Mississippi address on the Homestead form so that the check would be sent to her there. The claimant alleges that her permanent address during 2001 was 4215 Durand Ave. She states that the owners of this property told her they do pay taxes and that they have never had problems with their tenants receiving homestead credit. The claimant requests her 2001 homestead tax credit.

DOR recommends denial of this claim. DOR states that the claimant submitted numerous homestead credit forms for 2001. DOR states that the first form, received on January 3, 2002, indicated that the claimant lived at 41 Brown Circle, Laurel, Mississippi during 2001. DOR denied the homestead credit because the claimant did not reside in WI in 2001. DOR's denial notice informed that the claimant that she had 60 days from receipt of the notice to appeal the denial. On March 12, 2003, DOR received another 2001 homestead credit form indicating that the claimant's lived at 2525 Jacato Drive, Racine, WI in 2001. DOR sent a letter to the claimant stating that, because she had not filed a timely appeal to DOR's 2002 denial, that denial was final and conclusive. In April 2003, DOR received a response from the claimant, which included 2000 and 2001 homestead credit forms stating that she resided at 4215 Durand Avenue during 2000 and 2001. DOR again informed the claimant that the initial denial of her homestead credit was final because she had failed to file a timely appeal. In May 2003, the claimant submitted written request appealing the credit denial on the basis that she lived in WI during 2001. In response, DOR sent the claimant a copy of her original homestead form (with the Laurel, Mississippi address) and again explained that because she had not filed a timely appeal, DOR's decision was final.

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 neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

12. Joyce Gulbranson of Milwaukee, Wisconsin claims \$178.64 for vehicle damage, which allegedly occurred in September 2002 at SFP. The claimant states that in the parking area for the racetrack, there was an extremely high speed bump. The claimant alleges that she drove over the speed bump very slowly, but that her vehicle's muffler got caught and damaged.

She also states that when she was on the tram to go into SFP, several other visitors commented about the dangerously high speed bump and that the tram driver agreed and told them he would file a complaint with SFP officials. The claimant requests reimbursement for her damaged muffler.

SFP was sent a copy of this claim on April 22, 2003 but never responded to either the written request for a response and recommendation or several subsequent phone requests for a response.

The Board concludes the claim should be paid in the amount of \$178.64 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Wisconsin State Fair Park appropriation s. 20.190(1)(i), Stats.

The Board concludes:

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

- Daniel Erkkila
- Shivette M. Griffin
- Bruce B. Mohs
- Pastori M. Balele/JMB JOBS
- Mary Converse–Turner
- Federal Liaison Services
- Rosa Lee Williams

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

- Steve R. Scheel \$70.00
s. 20.115 (1)(a)
- Spencer and Alvern Calvert \$3,995.59
s. 20.566 (1)(a)
- Lawrence and Irene Frisch \$380.00
s. 20.566 (1)(a)
- Joyce Gulbranson \$178.64
s. 20.190 (1)(i)

3. The following claim is not timely and the Board declines to decide the claim at this time:

Linda Kilgore

Dated at Madison, Wisconsin this 13th day of October 2003.

- Alan Lee, Chair
Representative of the Attorney General
- John E. Rothschild, Secretary
Representative of the Secretary of Administration
- Eric Callisto
Representative of the Governor
- Dan Meyer
Assembly Finance Committee

**State of Wisconsin
Ethics Board**

October 21, 2003

To the Honorable the Senate:
The following lobbyists have been authorized to act on behalf of the organizations set opposite their names. For more detailed information about these lobbyists and organizations and a complete list of organizations and people authorized to lobby the 2003 session of the legislature, visit the Ethics Board's web site at <http://ethics.state.wi.us>

- Ashenfelter, Barry **Wisconsin Humane Society**
- Essie, Patrick **Circus World Museum**
- Jones, Glen **Wisconsin Troopers Association Inc**
- Schimming, Brian **Wisconsin Automatic Fire Sprinkler Coalition**

- Shibilski, Kevin **Wisconsin Teamsters Joint Council 39**
- Tierney, Jodie **Barr Laboratories**
- Tierney, Jodie **Blood Center of Southeastern WI Inc**
- Tierney, Jodie **Childrens Health System Inc**
- Tierney, Jodie **Cingular Wireless**
- Tierney, Jodie **Electronic Data Systems Corporation (EDS)**
- Tierney, Jodie **Milwaukee Metropolitan Sewerage District**

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 organizations that employ lobbyists.

Sincerely,

R. ROTH JUDD
Director

State of Wisconsin

October 16, 2003

The Honorable, The Senate:

Pursuant to Senate Rule 20 (2)(a) and (b) I have appointed Senator Carpenter to the Joint committee on Finance and removed Senator Decker.

With regard to members of the minority party, appointments are made based on the nominations of that caucus.

Sincerely,

SENATOR MARY PANZER
Senate Majority Leader

State of Wisconsin

October 17, 2003

The Honorable, The Senate:

Pursuant to Senate Rule 20 (2)(a) and (b) I have appointed Senator Cowles to the Building Commission and removed Senator Welch.

With regard to members of the minority party, appointments are made based on the nominations of that caucus.

Sincerely,

SENATOR MARY PANZER
Senate Majority Leader

State of Wisconsin

October 20, 2003

The Honorable, The Senate:

Pursuant to Senate Rule 20 (2)(a) and (b) I have appointed Senator Decker to the Joint committee on Finance and removed Senator Carpenter.

With regard to members of the minority party, appointments are made based on the nominations of that caucus.

Sincerely,

SENATOR MARY PANZER
Senate Majority Leader

ADVICE AND CONSENT OF THE SENATE

**State of Wisconsin
Office of the Governor**

October 13, 2003

The Honorable, The Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint SERVAIS, JAMES G., of Stoddard, as a member of the Land Information Board, to serve for the term ending May 1, 2009.

Sincerely,

JIM DOYLE
Governor

Read and referred to committee on **Homeland Security, Veterans and Military Affairs and Government Reform.**

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

The committee on **Economic Development, Job Creation and Housing** reports and recommends:

Senate Clearinghouse Rule 03-011

Relating to petroleum products.

No action taken.

Cathy Stepp
Chairperson

The committee on **Health, Children, Families, Aging and Long Term Care** reports and recommends:

Senate Clearinghouse Rule 03-023

Relating to the licensure and regulation of perfusionists.

No action taken.

Senate Clearinghouse Rule 03-072

Relating to accepting examinations from the Medical Council of Canada.

No action taken.

Carol Roessler
Chairperson

The committee on **Homeland Security, Veterans and Military Affairs and Government Reform** reports and recommends:

Senate Clearinghouse Rule 03-040

Relating to petitions for review.

No action taken.

Senate Clearinghouse Rule 03-070

Relating to greyhound racing and pari-mutuel wagering.

No action taken.

Ronald Brown
Chairperson

ADJOURNMENT

Senator Chvala, with unanimous consent, asked that the Senate adjourn until Wednesday, at 10:00 A.M..

Adjourned.

10:01 a.m.

**LEGISLATIVE REFERENCE BUREAU
CORRECTIONS**

CORRECTIONS IN:

**SENATE AMENDMENT 1,
TO SENATE SUBSTITUTE AMENDMENT 1,
TO 2003 SENATE BILL 214**

Prepared by the Legislative Reference Bureau

(October 17, 2003)

1. Page 2, line 24: delete "(intro.)".
2. Page 2, line 25: delete "(intro.), and" and substitute ", and".

CORRECTIONS IN:

2003 ASSEMBLY BILL 40

Prepared by the Legislative Reference Bureau

(October 17, 2003)

3. Page 4, line 4: delete "dangerous" and substitute "a dangerous".
4. Page 6, line 23: on lines 23 and 24, delete "restriction" and substitute "restrictions".
5. Page 7, line 1: delete "restriction" and substitute "restrictions".