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

INTRODUCTION OF BILLS

Read first time and referred:

Senate Bill 244

An act relating to a legislative council study of land value taxation.

By Senator Weeden; cosponsored by Representative Robson.

To committee on Aging, Banking, Communications and Taxation.

Senate Bill 245

Relating to requiring indigents to pay fees in harassment actions.

By Senators Burke, Moen, Petak, Huelsman, Breske, Lasee and Kreul; cosponsored by Representatives Darling, Roberts, Goetsch, Hahn, Ladwig, Musser, Schneiders, Urban and Wimmer.

To committee on Judiciary and Consumer Affairs.

PETITIONS AND COMMUNICATIONS
STATE OF WISCONSIN
ETHICS BOARD

July 2, 1991

To the Honorable the Senate:

At the direction of sec. 13.685(7), Wisconsin Statutes, I am furnishing you with the names of organizations recently registered with the Ethics Board as employing one or more individuals to affect state legislation or administrative rules. For each organization I have noted the general area of legislative or administrative action which the organization has described as the object of its lobbying activity and the name of each licensed lobbyist that the organization has authorized to act on its behalf.

Scientific Games, Inc.
Subjects: Lottery legislation.

Hanson, Thomas

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

Sincerely,
R. Roth Judd
Executive Director
STATE OF WISCONSIN
ETHICS BOARD

July 2, 1991

To the Honorable the Senate:

At the direction of sec. 13.685(7), Wisconsin Statutes, I am furnishing you with the following changes in the Ethics Board's records of licensed lobbyists and their employers.

Organization's authorization of additional lobbyists: The following organizations previously registered with the Ethic's Board as employers of lobbyists have authorized to act on their behalf these additional licensed lobbyists:

Fort Howard Corporation

Brozek, Michael

Journal Communications, Inc.

Wills, Robert H.

Multi-Housing Council, National

Richard, JoAnna
Fitzgerald, Moira

Oneida Tribe

Richard JoAnna
McNulty, Barry
Fitzgerald, Moira

Planned Parenthood of Wisconsin, Inc.

Fuller, Frankie

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

Sincerely,
R. Roth Judd
Executive Director
STATE OF WISCONSIN
ETHICS BOARD

July 9, 1991

To the Honorable the Senate:

At the direction of sec. 13.685(7), Wisconsin Statutes, I am furnishing you with the names of organizations recently registered with the Ethics Board as employing one or more individuals to affect state legislation oradministrative rules. For each organization I have noted the general area of legislative or administrative action which the organization has described as the object of its lobbying activity and the name of each licensed lobbyist that the organization has authorized to act on its behalf.

Edelweiss, Inc
Subjects: Legislation of Riverboat gambling in Wisconsin.

Schreiber, Martin

Krajewski, Thomas

Ready Mixed Concrete Association, WI WRMCA
Subjects: The WRMCA promotes the use of ready mixed concrete and works to provide a strong business climate for its members.

Wesener, Barbara

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

Sincerely,
R. Roth Judd
Executive Director

STATE OF WISCONSIN
ETHICS BOARD

July 9, 1991

To the Honorable the Senate:

At the direction of sec. 13.685(7), Wisconsin Statutes, I am furnishing you with the following changes in the Ethics Board's records of licensed lobbyists and their employers.

Organization's authorization of additional lobbyists: The following organizations previously registered with the Ethic's Board as employers of lobbyists have authorized to act on their behalf these additional licensed lobbyists:

American Farmland Trust

Wenzel, William

Golden Rule Insurance Company

Zanin, Michael

Leopold,Stephen

Student Association, Wisconsin

Van Horn, Jonathan

Organization's termination of lobbyists: Each of the following organizations previously registered with the Ethics Board as the employer of a lobbyist has withdrawn, on the date indicated, its authorization for the lobbyist identified to act on the organization's behalf.

Action Coalition, Wisconsin

Blumenfeld, Michael 7/1/91

Builders and Contractors of Wisconsin, Associated

Belanger, Wayne 7/1/91

Northwestern Mutual Life Ins. Co.

Hardy, George 7/2/91

Student Association, Wisconsin

Branzell, Hilding 7/3/91

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

Sincerely,
R. Roth Judd
Executive Director

State of Wisconsin
Legislative Audit Bureau

July 12, 1991

To the Honorable the Legislature:

We have completed an evaluation of the Milwaukee Metropolitan Sewerage District's implementation of the Water Pollution Abatement Program, as requested by the Joint Legislative Audit Committee. This program was initiated to improve sewage treatment and eliminate sewer overflows into Lake Michigan and is expected to cost $2.29 billion when it is completed in 1996. The program is the largest public works project in the State's history.

The Pollution Abatement program has experienced significant, unanticipated construction cost increases since its inception. The largest increases have occurred as a result of two projects, construction of a portion of the North Shore tunnel and rehabilitation of a sewage dewatering and drying facility at the Jones Island treatment plant. Overall, construction increases contract of 15 percent, or $205.9 million, have been approved as of December 1990.

The District contracted with an engineering consultant to manage the program and provide the majority of engineering services. While the district has retained final approval for the program fiscal and policy decisions, we believe the District could have done more to monitor the consultant's performance to ensure funds were spent effectively.

We also found the District needs to improve its policies and procurring procedures for consultant services. We found several procurement practices that, while not in violation of current district policies, would not be allowed under state and federal regulations and, in general, do not appear to be good public policy. The District has taken steps to clarify and improve a number of these practices.

We appreciate the courtesy and cooperation extended to us by districts staff and commissioners. A response from the Milwaukee Metropolitan District is the appendix.

Sincerely,
Dale Cattanach
State Auditor

State of Wisconsin
Legislative Audit Bureau

July 16, 1991

To the Honorable the Legislature:

We have completed an evaluation of the ambulance services provided to Medical Assistance recipients through the health maintenance organization (HMO) initiative in Milwaukee County, as requested by the Joint Legislative Audit Committee.

The ambulance companies have expressed concern that they are sometimes not paid for transporting Medical Assistance recipients to hospitals and that HMO's are slow to pay claims, while HMO's are concerned that the ambulance companies are seeking payment for unnecessary transports. The Department of Health and Social Services has not made it clear that the Medical Assistance program requires HMO's to pay only for medically necessary transports. There has been some confusion on this point because the Department's standards for emergency medical services require ambulance personnel to transport if there is any doubt about the need for a patient to see a physician.

Some HMOs and ambulance companies have resolved this dispute by agreeing on a single global fee to be paid for all ambulance responses regardless of whether the patient is subsequently transported to the hospital. If other HMOs and ambulance companies can reach similar agreements, this long-standing dispute may be resolved, but the Department could have acted earlier to assist in its resolution.

Four of six HMOs involved in the program in 1990 were found to be violating the requirement that ambulance claims be paid within 45 days. While the Department ordered corrective action in January 1991, its contract with HMOs includes no penalties for late payments.

We appreciate the courtesy and cooperation extended to us by staff of the Department of Health and Social Services and representatives of HMOs and ambulance companies in Milwaukee County. The Department's response is the appendix.

Sincerely,
Dale Cattanach
State Auditor

State of Wisconsin
Department of Health and Social Services

July 2, 1991

To the Honorable the Legislature:

1989 Wisconsin Act 31, Section 1118i, requires the Department of Health and Social Services to submit to the chief clerk of each house of the legislature a report on June 30 annually on the allocation and expenditure of funds for services for homeless individuals. Attached is the Department's second annual report.

Departmental staff are available if you have any questions or desire any additional information.

Sincerely,
Gerald Whitburn
Secretary

State of Wisconsin
Department of Natural Resources

July 2, 1991

To the Honorable the Legislature:

Under the new recycling law 1989 Wisconsin Act 335 s. 85(1 through 2(m)) the Department was to complete two studies. The first study concerned the recycling of discharged major appliances and the second was to investigate methods of collection and recyclability of household batteries. These studies were to be completed by June 30, 1991 and July 1, 1991 respectively.

We have recently released a request for proposal to prospective contractors to complete both of the studies. The actual work should begin by August 1, 1991. The decision to have these studies completed by an outside contractor was made in order to more efficiently and effectively gather information from inside and outside the United States in these new areas of environmental concern.

As you may know part of the directive of the major appliances study was the identification of environmental hazards associated with their recycling. Of particular concern is the release of ozone depleting refrigerants in some appliances when they are salvaged. We are actively involved in developing rules to implement 1989 Wisconsin Act 284 (the new refrigerants law). The information gathered in the major appliances report will assist us in our efforts to develop these rules.

Work will be completed by the selected contractors by November 1, 1991. I apologize for the delay and thank you for your patience and understanding in this important matter as we break new ground in these two new environmental and recycling areas. If you have any questions on our study please contact Paul Koziar in our Solid Waste Recycling Section at (608) 267-9388.

Sincerely,
C. D. Besadny
Secretary

EXECUTIVE COMMUNICATIONS

State of Wisconsin
Office of the Governor

July 12, 1991

To the Honorable, the Senate:

The following bills, originating in the senate, have been approved, signed and deposited in the office of the Secretary of State:

Senate Bill	Act No.	Date Approved
110	36	July 12, 1991

Respectfully,
TOMMY G. THOMPSON
Governor
State of Wisconsin
Office of the Governor

July 15, 1991

To the Honorable, the Senate

I am vetoing **Senate Bill 46** in its entirety. **SB 46** imposes scheduling and advance notice requirements on a governor when taking action on legislation. There are several reasons for my action.

To begin, the documents the bill seeks to compel this office to furnish are available only after a bill has been filed wit the Secretary of State's office of the house of origin.

Third, **SB 46** would needlessly restrict a governor's flexibility on when and where to sign legislation. For example, a governor is often asked to sign legislation affecting a specific group at an event sponsored by that group. Often times legislators make the request on behalf of the group and appear with the governor at the bill signing. Under **SB 46** a governor could not take action at such an event on a Friday evening or on a weekend: compliance with the provision s of **SB 46** would be impossible since the Governor's Office would be unable to file the bill with the Secretary of State's office within 24 hours.

Fourth, **SB 46** is unnecessary. The Executive Office has traditionally not only complied with existing law by providing copies of documents as soon as practicable and without delay, but has been very timely in filing bills with the Secretary of State's Office and with the houses of origin. My administration has accomplished this despite an often inordinate number of bills passed by the Legislature at the end of a session. For example, on April 20, 1990, 108 bills were delivered to the Governor's Office, all of which had to be acted on by 4:30 p.m., April 27. Of the 108 bills, 107 were filed with the Secretary of State or the appropriate house of origin within 24 hours of the Governor's action. The remaining bill, **Senate Bill 382**, was acted upon on Saturday, April 21, 1990. The bill was filed on Monday, April 23, the next business day.

Finally, I object to the provision mandating advance notice of a governor's intent to take action on legislation. For the legislature to legislatively demand such notice is an infringement on executive prerogative. Just as the legislature is under no obligation to inform the executive or anyone else when it plans to take action on a certain bill, likewise the governor should not be obligated to give notice of his or her intent to act on the same bill.

This is an issue which cuts across party lines and hold potentially adverse impacts for future governors as well as my administration. Former Governors Earl and Dreyfus have both written to me and the Legislature expressing their opposition to the bill.

For these reasons I am vetoing **Senate Bill 46.**

Respectfully,
TOMMY G. THOMPSON
Governor

State of Wisconsin
Office of the Governor

July 15, 1991

To the Honorable, The Senate:

I am vetoing **Senate Bill 182** in its entirety. This bill prohibits employers form permanently employing individuals who replace employes involved in labor disputes. It also prohibits employers form granting a preference to replacement employees over the employe involved in such a dispute.

Pursuant to the Commerce Clause of the United States Constitution, Article I, sec. 8, Congress enacted the National Labor Relations and Management Act (NLRA), 29 U.S.C. s. 1 et seq. (1935), later amended by the Taft-Hartley Act, 29 U.S.C. s. 141 et seq. (1947). The Commerce Clause both allows Congress to regulate interstate commerce, as well as serves to preempt states form enacting legislation in certain situations where Congress has exercised its powers.

When Congress enacted the NLRA, the ability of states to enact legislation dealing with labor law was severely curtailed. One such area of legislation was states' rights to regulate the hiring of permanent or temporary replacement workers during a strike. Three years after the enactment of the NLRA, the United States Supreme Court held that employers have the right under the NLRA to hire temporary or permanent replacement workers during a strike. N.L.R.B. v. MacKay Radio & Telegraph, 304 U.S. 333, 345 (1938). In doing so, the Supreme Court was not creating a new right under the NLRA, but rather was confirming an existing right. In addition, the court held that an employer is not bound by the NLRA to discharge replacement workers after the strike in order to rehire striking workers. MacKay, at 345-346. MacKay has been consistently reaffirmed by later courts. See TWA, Inc. v. Independent Federation of Flight Attendants, 489 U.S. 426 (1989); Machinists v. wisconsin Employment Relations Commission, 427 U.S. 132 (1976).

The rationale under MacKay, as explained by later courts, was that the economic actors in a strike situation may not be deprived of their right to self-help remedies. For the Employe, it is the right to strike. For the employer, it is the fundamental right to hire replacement workers in order to continue his or her business in the face of a strike. Felknap, Inc. v. Hale, 463 U.S. 491 (1938).

While MacKay does not explicitly hold that states are strictly preempted from passing legislation to prevent the

hiring of replacement workers, that is the effect. This became clear in Machinists. Machinists annunciated two separate areas where states may be preempted from acting; first, states may not regulate where Congress has expressly acted; or, second, where it can be discerned that Congress intended an area to remain unregulated. While ruling on a different issue, the Machinists court held in dictum that the ability of employers to hire replacement workers fits squarely within the second category. Machinists, at 153. The court reasoned, 'Although many of our past decisions concerning conduct left by Congress to the free play of economic forces address the question in the context of union and employe activities, self-help is of course also the prerogative of the employer because he, too, may properly employe economic weapons Congress meant to be unregulable.' Machinists, at 147.

Other Courts have confirmed the holdings of MacKay and Machinists, and have gone even further in holding that states are preempted in this area. In striking down the Illinois Strikebreakers Act, the federal court held that,'...[i] must be concluded, upon careful analysis, that the general subject of conditions for replacement strikers, or locked-out employes, in an industry affecting interstate commerce, is a matter which has been delegated to the National Labor Relations Board by Federal law.' Illinois v. Midland Co., n.o.r., 110 L.R.R.M. (BNA) 3320 [Dist.Ct.,C.D. Ill.] (1982). The Illinois act struck down by the federal court was very similar to **SB 182**. Other courts have also expressly held that states are preempted from prohibiting employers from hiring replacement workers. See, e.g., Alton Box Board Co. v. Alton, n.o.r., 77 L.R.R.M. (BNA) 2123 [Dist.Ct., S.D. Ill.] (1971); Amalgamated Transit Union v. Greyhound, 561 N.Y.S.2d 118 (Sup. 1990); City of Columbus v. Guay, n.o.r., 132 L.R.R.M. (BNA) 3046 [Franklin Co. Ct. App., Ohio] (1989). Moreover, based upon the same law and rationale, the governors of Maine and Minnesota have vetoed legislation having the same effect as **SB 182**.

For these reasons, I believe that **SB 182** is preempted by federal law and is therefore unconstitutional.

The authors of the bill, however, opine that it falls within the 'public peace, safety and order' exception to federal law -- otherwise known as the 'local interest exception.' Although exceptions do exist under federal preemption law, such is not the case here, and this argument will not save **SB 182** from its taint of unconstitutionality.

'The local interest exception only applies to local laws proscribing actual violence, threats of violence, or mass picketing. It does not apply where there is merely a potential for violence.' City of Columbus, at 3048, [citing Garner, Central Storage Co. v. Teamsters. 346 U.S. 485 (1953)]. Unconstitutional labor regulation which is cloaked under the local interest exeption will not otherwise be held constitutional. **SB 182**, while perhaps indirectly affecting safety, seeks to regulate labor activity. As the Amalgamated court noted while analyzing similar legislation and the possible public interest exception. 'There is simply no basis to hold that the impact of the anti-strike breaker law provision directed against the employer is tangential to a labor dispute or that pre-emption may be otherwise avoided.' Amalgamated, at 11. This was so because there was no actual or threat of violence being regulated. Instead, only the 'policing of actual or threatened violence to persons or destruction of property has been held most clearly a matter for the States. 'Machinists, at 136. For example, see Automobile Workers v. Russell, 356 U.S. 634 (1958), (upheld state-court jurisdiction of common-law tort of malicious interference with occupation of mass picketing and threats of violence); Automobile Workers v. Wisconsin Emp. Rel. Board, 351 U.S. 266 (1956), (sustained state authority to vest jurisdiction in a state labor relations board to enjoin violent union conduct); Allen-Bradley Local v. Wisconsin Emp. Rel. Board, 315 U.S. 740, 749 (1942), (state court may hear tort action based upon threats of violence); Youngdahl v. Rainfair, Inc., 355 U.S. 131 (1957), (sustained state court power to enjoin striking employes from threatening or provoking violence).

Under the NLRA, employers may hire replacement workers during a strike, and there is little doubt that states are preempted by federal law from regulating in this area. States may only do so by regulating specifically against actual or threats of violence to persons or property, or by using similar police power measures. **SB 182** is not such a measure.

Any change in this area must come at the federal level. I understand that on Wednesday of this week, the House of Representatives is scheduled to take up legislation (HR 5) designed to protect striking workers from being permanently replaced by their employers. Only through this type of congressional action, and not through state legislation like the bill before me, can the law be changed.

For these reasons I am vetoing **Senate Bill 182.**

Respectfully,
TOMMY G. THOMPSON
Governor

State of Wisconsin
Office of the Governor

July 8, 1991

To the Honorable, the Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint DANNY E. TROTTER of Edgerton, as a member of the Barbering and Cosmetology Examining Board pursuant to the statute governing, to serve for the term ending July 1, 1995.

Respectfully,
Tommy Thompson
Governor

Read and referred to committee on Agriculture, Corrections, Health and Human Services.

State of Wisconsin
Office of the Governor

July 8, 1991

To the Honorable, the Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint DARYLANN WHITEMARSH of Oshkosh, as a member of the Educational Communications Board pursuant to the statute governing, to serve for the term ending July 1, 1995.

Respectfully,
Tommy Thompson
Governor

Read and referred to committee on Education, Economic Development, Financial Institutions and Fiscal Policies.

State of Wisconsin
Office of the Governor

July 8, 1991

To the Honorable, the Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint KATHRYN M. NEITZEL of Baraboo, as a member of the Real Estate Examining Board pursuant to the statute governing, to serve for the term interim ending July 1, 1994.

Respectfully,
Tommy Thompson
Governor

Read and referred to committee on Housing, Government Operations and Cultural Affairs.

State of Wisconsin
Office of the Governor

July 8, 1991

To the Honorable, the Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint NANCY J. DOBRINSKI of Minocqua, as a member of the Hearing and Speech Examining Board pursuant to the statute governing, to serve for the term ending July 1, 1995.

Respectfully,
Tommy Thompson
Governor

Read and referred to committee on Agriculture, Corrections, Health and Human Services.

State of Wisconsin
Office of the Governor

July 8, 1991

To the Honorable, the Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint JAMES CLEMENCE OGUREK of Wausau, as a member of the Hearing and Speech Examining Board pursuant to the statute governing, to serve for the term ending July 1, 1995.

Respectfully,
Tommy Thompson
Governor

Read and referred to committee on Agriculture, Corrections, Health and Human Services.

SENATE CLEARINGHOUSE ORDERS

Senate Clearinghouse Rule 91-68

Relating to the medical assistance program.

Submitted by Department of Health and Social Services.

Report received from agency, July 11, 1991.

Referred to committee on Agriculture, Corrections, Health and Human Services, July 17, 1991.

The committee on Judiciary and Consumer Affairs reports and recommends:

Senate Clearinghouse Rule 91-30

Relating to materials addressed to the ethics board and forms.

No action taken.

Senate Clearinghouse Rule 91-16

Relating to a revision of the rules of the judicial commission.

No action taken.

Senate Clearinghouse Rule 90-261

Relating to reports of late campaign activity and in-kind contributions, capital assets, contributions by minors, ballot security and filing documents.

No action taken.

Senate Clearinghouse Rule 91-32

Relating to collision damage waivers and liability for damages to rental vehicles.

No action taken.

Lynn S. Adelman
Chair

CHIEF CLERK'S REPORT

The chief clerk records:

Senate Bill 110.
Senate Bill 182.

Correctly enrolled and presented to the Governor on July 12, 1991.

CHIEF CLERK'S REPORT

The chief clerk records:

Senate Bill 46.

Correctly enrolled and presented to the Governor on July 15, 1991.