

STATE OF WISCONSIN

Senate Journal

Ninety-First Regular Session

10:00 A.M.

THURSDAY, February 25, 1993

The Senate met.

The Senate was called to order by Fred A. Risser, President of the Senate.

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

INTRODUCTION OF RESOLUTIONS

Senate Joint Resolution 17

Relating to proclaiming May 3, 1993, Trzeciego Maja Day.

By Senators Plewa, Helbach, Breske, Drzewiecki, Risser, Potter, Burke, Moen, Petak, Lorman and Farrow; cosponsored by Representatives Kunicki, Ryba, Rutkowski, Grobschmidt, Krug, Notestein, Carpenter, Reynolds, Krusick, Baldus, Potter, Rosenzweig, Barca, Gronemus, Lorge, Bock, Stower, Boyle, Lehman, Schneiders, Porter and Underheim.

To committee on Senate Organization.

Senate Joint Resolution 18

Relating to limiting the number of consecutive terms permitted for state officers, members of the state legislature, and members of the United States congress from this state (first consideration).

By Senators Leean, Farrow, Schultz and Drzewiecki; cosponsored by Representatives Ladwig, Ziegelbauer, Boyle, Duff, Hahn, Owens, Underheim, Albers, Brancel, Dobyns, Otte, Kreibich, Harsdorf, Ryba and Freese.

Read first time and referred to committee on Urban Affairs, Financial Institutions and Environmental Resources.

INTRODUCTION OF BILLS

Read first time and referred:

Senate Bill 75

Relating to the issuance of search warrants in situations involving violations that involve forfeitures.

By Senators Lasee and Buettner; cosponsored by Representative Porter, Zien, Brandemuehl, Ryba and Schneiders.

To committee on Judiciary and Consumer Affairs.

Senate Bill 76

Relating to appropriate filing offices under the uniform federal lien registration act.

By Senators Huelsman and George; cosponsored by Representatives Prosser and Cullen.

To committee on Housing, Commerce, Government Operations and Cultural Affairs.

Senate Bill 77

Relating to termination of parental rights over a child conceived as a result of sexual assault.

By Senators Chvala, Breske, Clausing, Petak, Potter, Buettner, Lorman and Burke; cosponsored by Representatives Bell, Stower, Baldus, Musser, Turner, Duff, Wood, Lehman, Underheim, Notestein, Roberts, Plache, Boyle, Hahn, Ladwig, Goetsch, Bolle, Huber, Ainsworth, Harsdorf, Barca, Bock and La Fave.

To committee on Judiciary and Consumer Affairs.

Senate Bill 78

Relating to certain loans by cigarette manufacturers, distributors, jobbers, vending machine operators, multiple retailers and warehouse operators and tobacco product distributors and subjobbers and providing a penalty.

By Senators Risser, Clausing and Burke; cosponsored by Representatives Boyle, Bock, Turner and Roberts.

To committee on Judiciary and Consumer Affairs.

COMMITTEE REPORTS

The committee on Senate Organization reports and recommends:

Senate Joint Resolution 14

Relating to designating March as Women's History Month.

Adoption:

Ayes, 6—Senators Risser, Helbach, Chvala, Ellis, Rude and Farrow;

Noes, 0—None.

Fred A. Risser  
Chair

The committee on Housing, Commerce, Government Operations and Cultural Affairs reports and recommends: PETERSEN, JOHN, III, of Madison, as a member of the Wisconsin Housing and Economic Development Authority, to serve for the term ending January 1, 1996.

Confirmation:

Ayes, 6—Senators Plewa, Petak, Moore, Darling, Potter and Huelsman;

Noes, 0—None.

Senate Joint Resolution 5

Relating to naming Fond du Lac County the World Capital of Aerobatics.

Adoption:

Ayes, 6 -- Senators Plewa, Petak, Moore, Darling,  
Potter and Huelsman;  
Noes, 0 -- None.

John R. Plewa  
Chair

The committee on Education reports and recommends:

**Senate Bill 25**

Relating to permitting persons designated by school boards to take truants into custody.

Passage:

Ayes, 6 -- Senators Potter, Lorman, Jauch,  
Clausing, Petak and Darling;  
Noes, 0 -- None.

Calvin Potter  
Chair

PETITIONS AND COMMUNICATIONS

State of Wisconsin  
Department of Administration

February 15, 1993

To the Honorable the Legislature:

Chapter 34, Laws of 1979, requires that when the Department of Administration maintains an office in Washington, DC, for the purpose of promoting federal/state cooperation, it should submit a report detailing the activities of the office and reporting the status of federal legislation of concern to the Legislature and other state agencies (Wis. Stats. 16.548(2)).

The report for the period October 1, 1992, through December 31, 1992, is attached.

Sincerely,  
James R. Klauser  
Secretary  
State of Wisconsin  
Legislative Audit Bureau

February 23, 1992

To the Honorable the Legislature:

We have completed an evaluation of the Development Zone program as required by s. 560.79, Wis. Stats. The 12 development zones in Wisconsin provide a variety of tax credits to encourage business activity, including investment and job expansion, in economically distressed areas of the state. The Legislature has authorized \$18.155 million to fund the credits over seven years. The first eight zones were created in 1989.

Of the estimated 4,700 businesses located in development zones, 114 have been certified to participate in the program as of December 22, 1992. However, only 29 businesses have filed claims on their tax returns, and a total of \$863,883, or 4.8 percent of the \$18.155 million program authorization, has been paid in credits.

To a certain extent, this limited level of activity is reflective of the nature of the program, in which credits are received only after businesses make investments and file their year-end income tax returns. However, if this low level of activity continues, the Department of Development and the Legislature should consider ways to encourage participation, or else reassess the need for continuation of the program.

Our review also found that, overall, the Department has followed statutory requirements in administering the program. We include several recommendations for administrative improvements in the Department, as well as in the Department of Revenue, where we identified processing errors that resulted in payment of over \$56,000 in inappropriate claims.

We appreciate the courtesy and cooperation of officials of the Department of Development, the Department of Revenue, and the development zones. Responses from the departments are included in the appendices.

Sincerely,  
Dale Cattanach  
State Auditor

State of Wisconsin  
Department of Health and Social Services

February 17, 1993

To the Honorable the Legislature:

The biennial budget bill, 1983 Wisconsin Act 27, enacted s. 46.275, Community Integration Program (CIP) for Residents of State Centers. The intent of this program "is to relocate persons from the state centers for the developmentally disabled into appropriate community settings with the assistance of home and community-based services and with continuity of care. The intent of the program is also to minimize its impact on state employees through redeployment of employees into vacant positions." S. 46.275(5m) requires the Department to submit a report to the Joint Committee on Finance and to the Chief Clerk of each house of the Legislature describing the program's impact during the preceding calendar year on state employees, including the Department's efforts to redeploy employees into vacant positions and the number of employees laid off.

For the period of January 1, 1992 to December 31, 1992, there were 60 CIP placements, one CIP returnee, and one CIP diversion. For fiscal year 1992, reductions of \$1,700,907 and 46.35 FTE were made in the budget for the purpose of CIP placements. For the period July 1, 1992 through December 31, 1992, sufficient reductions will be made in the fiscal year 1993 operating budget to reflect reductions for CIP placements. Reductions of positions and dollars have been made for calendar year 1992 with no layoff of employees.

Sincerely,  
Gerald Whitburn  
Secretary

State of Wisconsin  
Department of Natural Resources  
February 19, 1993

Edward D. Main  
Representative of Secretary of  
Administration

William H. Wilker  
Representative of Attorney  
General  
State of Wisconsin  
Claims Board

February 23, 1993

To the Honorable the Legislature:

Senate Bill 483, Section 9142, Subsection 12C, directed the Department of Natural Resources to conduct a study to address the issues of white-tail deer farming. The Department delivered an initial report to your office on February 5, 1993. Since then, we have updated the document, expanding several areas that required further clarification. Enclosed you will find the updated copy of the report.

If you have questions concerning this please telephone me at 266-0015 or Tom Solin at 266-2774.

Sincerely,  
George E. Meyer  
Secretary

State of Wisconsin  
Claims Board

February 18, 1993

To the Honorable the Senate

Regarding Claim of Peter Ambler

Enclosed, please find a copy of the decision of the State Claims Board regarding the above claim which was filed against the State of Wisconsin.

STATE OF WISCONSIN  
CLAIMS BOARD  
FINAL DECISION

The State of Wisconsin Claims Board, having considered the above-captioned matter and having reviewed the record and the proposed decision of the hearing examiner, makes the following:

DECISION

NOW, THEREFORE, it is hereby ordered that the proposed decision annexed hereto, filed by the hearing examiner, shall be and hereby is made the final decision of the State of Wisconsin Claims Board.

The rights of a party aggrieved by this decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "NOTICE OF APPEAL INFORMATION."

Dated this 18th day of February, 1993.

Gary R. George  
Senate Finance Committee

Barbara J. Linton  
Assembly Finance Committee

Jeffrey J. Bartzen  
Representative of Governor

To the Honorable the Senate

Enclosed is the report of the State Claims Board covering claims heard on February 9, 1993.

The amounts recommended for payment under \$2000 on claims included in this report have, under the provisions of s. 16.007, Wisconsin Statutes, been paid directly by the Board.

The Board is preparing the bill(s) on the recommended award(s) over \$2,000, if any, and will submit such to the Joint Finance Committee for legislative introduction.

This report is for the information of the Legislature. The Board would appreciate your acceptance and spreading of it upon the Journal to inform the members of the Legislature.

Sincerely,  
Edward D. Main  
Secretary

STATE OF WISCONSIN  
CLAIMS BOARD

The State Claims Board conducted hearings at the State Capitol Building, Madison, Wisconsin on February 9, 1993, upon the following claims:

Claimant	Amount
Wayne Young	1,146.97
Voigt Music Center	5,374.64
Barbara Reinhold	631.50
Sheila Arp	4,402.30
George & Donna MacKenzie	10,292.00
Monona Restaurant, Inc.	23,994.28
Charles Simandl, III	3,525.00
Rural Radiology Service, S.C.	1,050.00

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

Heritage Mutual Insurance	326.34
David Dintelman	84.35
Laura Anderson	80.18
Jon Vanderploeg	105.27
Dianna Bartley	1,180.00
Gary Malkmus	300.00
Arthur Fariole, Jr.	625.00
Cedar River Truck Co., Inc.	440.00
Violet Lichtenberg	2,344.89

THE BOARD FINDS:

1. Wayne Young of Verona, Wisconsin, claims \$1,146.97 for medical expenses incurred as a result of

injuries he allegedly sustained in a bicycle accident on the Sugar River State Recreational Trail on June 11, 1992. Claimant allegedly fell off of his bicycle when he hit a hole on the trail surface. The Sugar River Trail surfaces are inspected at least weekly by maintenance staff, and holes are filled as soon as they are discovered. Section 895.52, Stats., limits liability for damages resulting from the use of state-owned recreational facilities under these circumstances in the absence of the showing of a malicious act or malicious failure to warn of a known unsafe condition. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

2. Voigt Music Center of Beloit, Wisconsin, claims \$5,374.64 plus interest, for sales and use taxes paid to the Wisconsin Department of Revenue from 1981 to 1986. Voigt Music Center is located on the state border between Wisconsin and Illinois. Claimant had lease/purchase agreements with several Illinois residents for musical band instruments. Claimant paid all sales and use taxes to the State of Wisconsin from 1981 through 1986. When claimant was recently audited by the State of Illinois, it was determined that a portion of the sales and use taxes should have been paid to the State of Illinois. Pursuant to the Wisconsin sales and use tax law, claims for refund must be filled within four years of the date the tax was due. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

3. Barbara Reinhold of Windsor, Wisconsin, claims \$631.50 for attorney fees allegedly resulting from the performance of her duties as an Assistant District Attorney in Columbia County. In 1991, claimant declined to file charges against an individual who allegedly engaged in conduct constituting fourth degree sexual assault against a University of Wisconsin (UW) employe. Under the State Public Records Law, the UW employe subsequently requested copies of claimant's personnel file from claimant's employer, the Department of Administration. Claimant retained private legal counsel to assist her in requesting the Department of Administration not to release certain information. Claimant did not request advice from the Attorney General's office because she believed that office was providing advice to the UW employe. The Attorney General's office received correspondence from the UW employe, but was not representing the employe. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles. (Member Main not participating).

4. Sheila Arp of Madison, Wisconsin, claims \$4,402.30 for miscellaneous expenses and damages to her vehicle allegedly incurred on July 2, 1992, when it was stolen from the Creative Learning Preschool, where she is employed. The vehicle was stolen by a juvenile from the Mendota Mental Health Institute who had been placed at the Preschool on a work-release program. The vehicle was recovered three days later in Milwaukee with uninsured damages in the amount of \$4,167.96. The Board concludes the claim should be paid in the reduced amount of \$1,000.00, based on equitable principles. The Board further concludes, under authority of s. 16.007(6m), Stats., payment should be made from the Department of Health and Social Services appropriation s. 20.435(2)(gk), Stats.

5. George and Donna MacKenzie of Madison, Wisconsin, claim \$10,292.00, plus interest, for funds withheld by the Department of Health and Social Services for services allegedly provided to medicaid recipients at the Oxford Convalescent Home from October 1, 1980 through April 30, 1981. This facility was operated under the license of Country Home Manor Corporation until December 31, 1980. From January 1, to April 30, 1981 Mr. MacKenzie operated the Home as sole proprietor. The Department of Health and Social Services withheld the funds because it did not receive a timely cost report which would have been used to establish rates for the time in question. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

6. Monona Restaurant, Inc. of Monona, Wisconsin, claims \$23,994.28 for unemployment compensation taxes assessed by the Department of Industry, Labor and Human Relations (DILHR) for 1991. Monona Restaurant opened for business in December 1987. The initial unemployment compensation rate was 3.3%. During the construction of the new East Beltline Highway, claimant's business declined substantially and it fell behind in payment of unemployment compensation contributions to DILHR. In December 1990, the unpaid unemployment compensation balance was paid in full by claimant. However, the statutes governing the the determination of unemployment compensation tax rates require the money be in the reserve fund as of July 31 prior to the commencement of the year for which the rate is calculated. This was not true in claimant's case and DILHR applied its statutory tax rate chart in ss. 108.18(4) and (9), Stats., to arrive at a tax rate of 6.4% for 1991. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles. (Member Wilker not participating).

7. Charles Simandl, III of Delavan, Wisconsin, claims \$3,525.00 for the costs incurred to replace his failing septic system. Section 145.245, Stats., authorizes payment of grant funds for rehabilitation or replacement of failing septic systems. Claimant believed he was eligible to receive grant funds based on information he received from Walworth County in 1991. Claimant's application for reimbursement was denied because under changes to the law that became effective August 15, 1991, his income rendered him ineligible. Pursuant to ILHR 87.02, Wis. Administrative Code, claimant's replacement system was eligible for funding in the amount of \$1,200.00. The Board concludes, the claim should be paid in the reduced amount of \$900, based on equitable principles. The Board further concludes the claim should be paid from the Claims Board appropriation s. 20.505(4)(d), Stats.

8. Rural Radiology Service of Princeton, Wisconsin, claims \$1,050.00 for costs incurred to verify the filing of its 1991 Annual Corporation Report with the Secretary of State's Office. In April, 1992, the Secretary of State's office sent claimant a notice of "Grounds for Administrative Dissolution" for failure to file an annual report and pay the filing fee within one year after it was due. Claimant alleges the annual report and filing fee were submitted to the Secretary of State's Office, however, the Secretary of State's office has no record of receiving claimant's 1991 report or filing fee. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles. (Member Wilker not participating).

9. Heritage Mutual Insurance of Sheboygan, Wisconsin, claims \$276.34 subrogation damages and \$50 for the deductible amount paid by its insured, Milton Johnson, for damages allegedly incurred to Mr. Johnson's vehicle on June 1, 1992, while it was parked at the Northern Wisconsin Center. The damage was allegedly caused by a resident of the Center. Consistent with a long-standing policy of this Board concerning subrogation claims, the Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents, or employees and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

10. David Dintelman of Madison, Wisconsin claims \$84.35 for the uninsured amount to repair his ring which was allegedly damaged on August 5, 1992, while he was assisting in the cleanup from a fire in an adjacent building which caused smoke and water damage at the State Elections Board office, where he is employed. Inasmuch as the loss occurred as a result of a situation beyond what the claimant might normally be expected to encounter in his employment, the Board concludes the claim should be paid based on equitable principles. The Board further concludes, under authority of s.

16.007(6m), Stats., payment should be made from the State Elections Board appropriation s. 20.510(1)(a), Stats.

11. Laura Anderson of Glenwood City, Wisconsin, claims \$80.18 for the cost of repairing her wedding ring allegedly damaged on September 4, 1992, at the State Public Defender's office, where she is employed. Claimant was moving a file cabinet and her finger became caught between a full file and a door, smashing her wedding ring. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

12. Jon Vanderploeg of Madison, Wisconsin, claims \$105.27 for the cost of repairing his vehicle allegedly damaged by vandalism while it was parked in the Department of Administration fleet services parking lot on November 29, 1992. Claimant had parked his car in the fleet lot while he was using a state vehicle. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is not one for which the state is legally liable, nor one which the state should assume and pay based on equitable principles.

13. Diana Bartley of Mequon, Wisconsin, claims \$1,180.00 for loss of money allegedly stolen from her rental vehicle while it was parked at a French national park in Compiègne on July 1, 1992. In the summer of 1992, claimant served as the director of a University of Wisconsin-sponsored outreach trip to France, for the purpose of studying the French school system. Unknown persons smashed a window to gain access to the vehicle and stole \$1,380.00 in cash which claimant had left in her purse under the front seat of the locked vehicle. Claimant received \$200 from her homeowner's insurance for the loss. The Board concludes the claim should be paid in the reduced amount of \$590, based on equitable principles. The Board further concludes, under authority of s. 16.007(6m), Stats., payment should be made from the University of Wisconsin appropriation s. 20.285(1)(h), Stats.

14. Gary Malkmus of Sturtevant, Wisconsin, claims \$300.00 for the alleged loss of his clothing and property when he entered the Dodge Correctional Institution in January, 1991. At claimant's request, the Institution sent his personal property to Doris Raab in Oshkosh, Wisconsin. On July 9, 1992 the Institution contacted Ms. Raab and she verified that she received claimant's property and subsequently gave it to Goodwill. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers agents or employees and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

15. Arthur Fariole, Jr. of Sturtevant, Wisconsin, claims \$625.00 for damaged eyeglasses, legal fees,

personal costs, copying, postage and physical suffering allegedly incurred when he was transferred from the Kettle Moraine Correctional Institution to the Racine Correction Institution in July 1992. Claimant alleges certain property was lost and his eyeglasses were broken during his transfer to the Racine Correction Institution. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

16. Cedar River Truck Company, Inc., of Powers, Michigan, claims \$440.00 for partial refund off a Wisconsin Multiple Trip permit purchased on April 30, 1992, with an effective date of May 1992. As a result of Wisconsin Act 258, new permit fees were implemented on May 13, 1992 and claimant would have been able to purchase the permit at a reduced fee. The Board concludes the claim should be paid based on equitable principles. The Board further concludes, under authority of s. 16.007(6m), Stats., payment should be made from the Department of Transportation fund, unappropriated revenue.

17. Violet Lichtenberg of Beloit, Wisconsin, claims \$2,344.89 for damages to her barn as a result of construction work on Highway 81 in Rock County during 1990. The construction project called for ditching in front of claimant's barn which is located along the state's right-of-way. Claimant alleges the construction caused cracks in the concrete floor and walls of the barn, broken windows and destroyed a storage shed. At claimant's request, the Department of Transportation performed additional work to improve the entrance to her barn. Claimant alleges the barn could not be used for normal purposes during the summer of 1990, due to construction. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

**THE BOARD CONCLUDES:**

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

- Wayne Young
- Voigt Music Center
- Barbara Reinhold
- George & Donna MacKenzie
- Monona Restaurant, Inc.
- Rural Radiology Service, S.C.
- Heritage Mutual Insurance
- Laura Anderson
- Jon Vanderploeg
- Gary Malkmus
- Arthur Fariole, Jr.
- Violet Lichtenbert

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

Sheila Arp	\$1000.00
Charles Simandi, III	\$900.00
David Dintelman	\$84.35
Diana Bartley	\$590.00
Cedar River Truck Co., Inc.	\$440.00

Dated at Madison, Wisconsin this 18th day of February, 1993.

Gary R. George  
Senate Finance Committee

Barbara J. Linton  
Assembly Finance Committee

Jeffrey J. Bartzen  
Representative of Governor

Edward D. Main  
Representative of Secretary of Administration

William H. Wilker  
Representative of Attorney General

**SENATE CLEARINGHOUSE ORDERS**

The committee on Housing, Commerce, Government Operations and Cultural Affairs reports and recommends:

**Senate Clearinghouse Rule 92-138**

Relating to requirements for entrance to examinations for professional engineers.

No action taken.

John R. Plewa  
Chair

**Senate Clearinghouse Rule 92-26**

Relating to the definition and responsibilities of the establishment owner and manager and the standards for the operation of licensed establishments operating as booth rental establishments.

Submitted by Department of Regulation and Licensing.

Report received from agency, February 24, 1993.

Referred to committee on Health Care, Human Services and Corrections, February 25, 1993.

**Senate Clearinghouse Rule 93-2**

Relating to the addition of court commissioners to the jurisdiction of the judicial commission.

Submitted by Judicial Commission.

Report received from agency, February 24, 1993.

Referred to committee on Judiciary and Consumer Affairs, February 25, 1993.

Senator Risser, with unanimous consent, asked that the Senate adjourn until 10:00 A.M. Tuesday, March 2.

10:01 A.M.