



STATE OF WISCONSIN

Senate Journal

Ninety—Second Regular Session

10:00 A.M.

THURSDAY, March 14, 1996

The Senate met.

The Senate was called to order by Senator Brian Rude.

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

INTRODUCTION AND REFERENCE OF RESOLUTIONS AND JOINT RESOLUTIONS

Read and referred:

Senate Joint Resolution 55

Relating to: encouraging employers to facilitate the participation of their employes as elections inspectors.

By Senators Chvala, Clausung, Burke and Grobschmidt; cosponsored by Representatives Hanson, Baldwin and Bock.

To committee on **State Government Operations and Corrections**.

Senate Joint Resolution 56

Relating to: proclaiming May 3, 1996, Trzeciego Maja Day.

By Senators Drzewiecki, Shibilski, A. Lasee, Andrea, Moen, Zien, Petak, Rosenzweig, Breske, Grobschmidt, Jauch, C. Potter, Rude, Welch, Cowles, Farrow, Decker, Chvala, Risser, George, Adelman, Burke, Fitzgerald, Panzer, Darling, Moore, Ellis, Schultz, Clausung, Weeden, Buettner and Wineke; cosponsored by Representative Zukowski.

To committee on **Senate Organization**.

INTRODUCTION, FIRST READING AND REFERENCE OF BILLS

Read first time and referred:

Senate Bill 623

Relating to: providing for treatment and services for persons who are found to be sexually violent persons and placed under supervised release, services to inmates and making appropriations.

By Senators Darling, Drzewiecki, Zien, Rosenzweig and Andrea; cosponsored by Representatives Schneiders, Goetsch, Brancel, Johnsrud, Black, Silbaugh, Hahn, Kelso, Wirsch, Musser, Porter, Jensen, Ziegelbauer, Olsen, Owens and Brandemuehl.

To joint committee on **Finance**.

Senate Bill 624

Relating to: juvenile justice and granting rule-making authority.

By Senators Panzer, C. Potter and Huelsman; cosponsored by Representative Ladwig.

To committee on **Judiciary**.

Senate Bill 625

Relating to: authorizing school closings, and the reassignment of staff resulting from such closings or subsequent reopenings without regard to seniority, in a 1st class city school district.

By Senator Darling; cosponsored by Representative Jensen.

To committee on **Education and Financial Institutions**.

REPORT OF COMMITTEES

The committee on **Human Resources, Labor, Tourism, Veterans and Military Affairs** reports and recommends:

Assembly Joint Resolution 62

Relating to: memorializing Congress to modify restrictions on the use of veterans mortgage bonds.

Concurrence.

Ayes, 5 – Senators Zien, A. Lasee, Fitzgerald, Breske and Decker.

Noes, 0 – None.

Senate Joint Resolution 54

Relating to: urging Congress and the President to enact legislation to confer national monument status on the National Native American Vietnam Veterans Memorial at “The Highground”.

Adoption.

Ayes, 5 – Senators Zien, A. Lasee, Fitzgerald, Breske and Decker.

Noes, 0 – None.

David Zien
Chairperson

PETITIONS AND COMMUNICATIONS

State of Wisconsin Claims Board

March 13, 1995

The Honorable, The Senate:

Enclosed is the report of the State Claims Board covering the claims heard on February 22, 1995.

The amounts recommended for payment under \$5,000 on claims included in this report have, under the provisions of s. 16.007, Stats., been paid directly by the Board.

The Board is preparing the bill(s) on the recommended award(s) over \$5,000, if any, and will submit such to the Joint Finance Committee for legislative introduction.

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

Sincerely,

EDWARD D. MAIN
Secretary

STATE OF WISCONSIN CLAIMS BOARD

The State Claims Board conducted hearings at 119 Martin Luther King Jr. Blvd. , Madison, Wisconsin on February 22, 1996, upon the following claims:

<u>Claimant</u>	<u>Amount</u>
1.Wesley A. Aker	\$1,004.24
2.Richard J. Trgovec	\$3,374.32
3.City of Superior	\$1,366,819.47
4.Ray K. Miller, Jr.	\$14,000.00

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

5.Gerald Blunt	\$3,520.00
6.Robert Hinderman	\$1,248.00
7.Anne Paolini	\$185.00
8.Robert J. Wuilleumier	\$81.24
9.Farmers Savings Bank	\$1,830.00
10.Luxury Fabrics, Inc.	\$216.24
11.Elizabeth Martin	\$317.25
12.David D. Wulf	\$416.94
13.Terrance O. Harvey	\$64,950.00

The Board Finds:

1. Wesley A. Akers of Rockford, Illinois, claims \$1,004.24 for refund of wages garnisheed for 1980 Wisconsin income taxes. The claimant is a resident of Illinois and has never lived or worked in Wisconsin. He sent information several times to the Wisconsin DOR showing that he was not a Wisconsin resident and was told that the matter would be cleared up. In 1995, DOR began to garnish his wages without any warning and had taken \$1,004.24 before the claimant was able to get information from the Illinois Department of Revenue proving that he had always lived and worked in Illinois. 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. Richard J. Trgovec of Sheboygan Falls, Wisconsin, claims \$3,374.32 for reimbursement of legal fees and interest related to charges of deer hunting violations brought against him by the DNR. The claimant was charged with exceeding the bag limit and failing to immediately tag a deer during bow hunting season. The claimant denies shooting two deer, stating that one of the deer was shot by his father. A jury found the claimant not guilty of the charges. The claimant believes the charges should never have been brought due to insufficient evidence against him. He states that the DNR relied on the hearsay testimony of three individuals, all of whom have criminal records and questionable character. Furthermore, the statements made by these individuals were inconsistent and highly improbable, given the time frame during which the claimant supposedly shot

both deer. The claimant believes these people made false statements about him because they were jealous of his hunting successes and trophies. He also points to the fact that there was a videotape made the day he went hunting, in which he explains how he shot one deer and his father shot the other. This tape was submitted to the DNR, however, the claimant does not believe they reviewed the tape until the trial. The claimant does not believe that charges should have been brought against him and requests reimbursement of \$3,300.75 for attorney's fees and \$73.57 lost interest. 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. The City of Superior, Wisconsin, claims \$1,366.819.47 for refund of taxes paid to the state under a statute found to be illegal and unconstitutional, and for legal expenses incurred by the city. In 1977, the Wisconsin legislature adopted s. 70.40, Stats., which imposed an occupational tax on iron ore concentrate docks. The City of Superior was made the collecting agency for this tax, but was allowed to keep only 70% of the tax, and forwarded the remaining 30% to the state. A 1986 WI Supreme Court decision declared the taxes unconstitutional. As a result of the ruling, the city was ordered to repay taxes collected under the statute, on behalf of the state, since 1977. On August 17, 1987, the Claims Board recommended payment of \$1,575,932.89 to the city for the state's share of the tax, plus 5% interest to November 2, 1987. The legislature passed 1987 WI Act 414, which authorized payment of \$1,613.364.53 to Superior. On April 21, 1994, the Claims Board considered a claim by Superior for an additional \$1,366.819.47, for taxes collected by the city for the years 1986-1989, under the amended s. 70.40, Stats., which the courts also declared unconstitutional. The Board recommended payment of \$700,000. This amount was deemed unacceptable by the city, therefore, no legislation was drafted and the city was granted a re-hearing for the claim of \$1,366,819.47. This claim was re-heard by the Board on June 8, 1995, and denied. Superior requested and was granted another re-hearing. The Board recommends that the claim be paid in the reduced amount of \$775,000, based on equitable principles. The Board further recommends, under the authority of s. 16.007 (6m), Stats., payment be made from Claims Board appropriation 20.505 (4)(d), Stats.

4. Ray K. Miller, Jr. of Spring Green, Wisconsin, claims \$14,000.00 for damages related to the listing of his '800' number in the "Winter Recreation Guide" published by the Department of Tourism. The claimant used to own The Ranch, a sleigh ride service at Christmas Mountain Village. In 1992 and 1993 he became aware that Christmas Mountain was submitting The Ranch's '800' number to Tourism for publication in the guide. He contacted Tourism to inform them that The Ranch was an independent business and that his number should not be listed under Christmas Mountain. In January 1994, he sold The Ranch but kept the same '800' number for his new business, Equiscan International Services. He again contacted Tourism, however, his number continued to appear in the guide and he still receives a large number of calls for sleigh ride information. The claimant is charged for these '800' calls and also must return messages. Calls for sleigh ride information fill up his voice mail so his Equiscan customers cannot leave messages, causing him to lose business. His damages for Fall/Winter 94-95 and Fall/Winter 95-96 are as follows: \$3,000 incoming calls, \$3,000 outgoing calls, \$2,400 labor to answer and return calls, \$7,000 lost business, and \$3,000 nuisance factor of calls after 10 p.m. These damages total \$18,400, however, the claimant is willing to settle this portion his claim for \$10,000. In addition, he requests \$4,000

for 50 hours time spend pursuing this claim at \$80 per hour. The Board concludes the claim should be paid in the reduced amount of \$500.00, based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from Department of Tourism appropriation s. 20.380(1)(a), Stats. (Representative Brancel not participating.)

5. Gerald Blunt of Racine, Wisconsin, claims \$3,520.00 for lost wages due to revocation his parole. The claimant was on parole for first degree sexual assault. In October 1991, he was accused of violating his parole by having sexual contact with an adult female without her consent. The alleged victim, who reported the incident to the police, knew the claimant and indicated that she would be willing to testify at a parole revocation hearing. The claimant alleges that he was counseled by the Division of Probation and Parole that he would be better off without a hearing and, therefore, waived his rights to a revocation hearing. He maintained his innocence throughout the process. His parole was revoked in early January 1992. On January 24, 1992, the alleged victim recanted her statement to the police, admitting that she lied about the incident. The claimant's parole was reinstated on February 26, 1992. At the time his parole was revoked, the claimant had been employed full-time, earning \$5.50 an hour. Since his release, he has not been able to obtain work and lives on social security. He claims \$3,520 for 640 hours of lost wages. The claimant believes that the DOC was negligent in counseling him to waive his hearing rights and did not sufficiently investigate the allegations against him. 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. Robert Hinderman of Omro, Wisconsin, claims \$1,248.00 for reimbursement of legal fees incurred because of a small claims court action brought against him by a state employe. The claimant is a supervisor at UW-Oshkosh. On October 21, 1992, he observed an employe under his supervision talking with two other employes. He criticized her for standing around talking during work hours by calling her "Auntie Blabee." This offended the employe and she slapped the hat off of his head. He responded by clapping his hands over the side of her head (ears). Two years later the employe filed a lawsuit against him because of this incident. He requested representation by the Attorney General's office but was denied, therefore, he hired private counsel. The court dismissed the suit for failure to timely file and the claimant was awarded \$108.30 court costs, which he never received. His attorney's fees totaled \$1,248.00. 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.

7. Anne Paolini of Tulon, France, claims \$185.00 for medical expenses related to injuries sustained at the October 30, 1993, UW-Michigan football game at Camp Randall. At the end of the game, students rushed the field, resulting in a stampede which caused a number of spectators to be injured. The claimant sustained injuries to her pelvis, left knee, right ankle and uterus from being buried at the bottom of a pile of students and crushed onto a bleacher. She has \$185 in medical bills that are not covered by her insurer. 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 University of Wisconsin appropriation s. 20.285 (5)(h), Stats.

8. Robert J. Wuilleumier of Madison, Wisconsin, claims \$81.24 for damage to his boat motor incurred at Governor Nelson State Park on September 4, 1994. The claimant was loading his boat onto a trailer when the motor hit the bottom of a shallow area and was damaged. Due to the bloom in the water, it was not possible to see the shallow depth of the water. Maps of the area show the water depth to be 5 feet. The claimant measured the depth after the accident and found the depth to be 3 feet up to the half-way point of the pier but less than 2 feet from the half-way point to the end of the 30 foot pier. The claimant also discovered that the bottom of this shallow area is very rocky, creating an additional hazard. He feels there should have been shallow water warnings posted. He also believes that a reasonable person would not expect the water depth to decrease toward the end of a 30 foot pier. The claimant does not feel that this water depth is safe for a pier of this size and believes the DNR should have posted warnings. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

9. Farmers Savings Bank of Mineral Point, Wisconsin, claims \$1,830.00 for overpayment of Wisconsin Consumer Act Notification Fees. The bank incorrectly reported commercial loans and consumer loans that carried an interest rate of less than 12% and, therefore, over reported the dollar amount of their consumer credit transactions. This error was made on seven reports from 1986-1992, resulting in a total overpayment of \$1,830.00 in fees. The claimant requests reimbursement of these overpayments. 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 Office of the Commissioner of Banking appropriation s. 20.124(1)(g), Stats.

10. Luxury Fabrics, Inc. of Grand Rapids, Michigan, claims \$216.24 for the cost of repairing a vehicle which was damaged on April 25, 1995. The claimant's car was parked in the Fairfield Inn parking lot in Madison. Three state employes driving a fleet vehicle parked next to the claimant's vehicle. The claimant states that when the state employes exited their vehicle, their left rear door banged into his vehicle, denting the door and nicking the paint. The claimant requests reimbursement for the cost of repairing the vehicle. The claimant has a \$250.00 insurance deductible. 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.

11. Elizabeth Martin of Pine River, Wisconsin, claims \$317.25 for reimbursement of uninsured medical expenses related to an accident at the DOT Berlin Armory field office on April 11, 1995. The claimant was entering the building when the wind caught the door, which was very heavy. The door blew shut, trapping her foot and knocking her down. The claimant's foot was broken. She feels that the DOT should provide a safe place for all of its clients and that another entrance to the building should be used, rather than one with no landing and a heavy door subjected to the weather. She requests reimbursement of her uninsured medical costs. 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.

12. David D. Wulf of Harshaw, Wisconsin, claims \$416.94 for damage to his vehicle. The claimant is employed at the McNaughton Correctional Center in Tomahawk, WI. On December 23, 1994, his vehicle, which was parked in the Center parking lot, was scratched by an unknown person. The scratch is approximately 6 feet long and 1/2 inch wide and is located on the driver's side of the truck box. The claimant is certain that the scratch was not there before he came to work, because he stopped to get gas before work and the gas cap is on the driver's side. The claimant believes the car was vandalized because he parked in the parking slot marked for the social worker. 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.

13. Terrance O. Harvey of Fox Lake, Wisconsin, claims \$64,950.00 for damages related to the extension of his probation. The claimant's 2 year probationary period ended at midnight on April 18, 1990. On April 23, 1990, an order was signed by a Rock county Circuit Court judge extending the probation for an additional year, due to an alleged probation violation. As a result, the claimant was incarcerated from October 1, 1990, until January 6, 1992. The claimant requests payment of \$150 per day he was incarcerated (433 days) for a total claim of \$64,950.00. 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:

Wesley A. Akers
 Richard J. Trgovec
 Gerald Blunt
 Robert Hinderman
 Robert Wulleumier
 Luxury Fabrics, Inc.
 Elizabeth Martin
 David D. Wulf
 Terrance O. Harvey

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

Ray K. Miller, Jr.	\$500.00
Anne Paolini	\$185.00
Farmers Savings Bank	\$1,830.00

The Board recommends:

1. Payment of \$775,000.00 be made to the City of Superior for refund of taxes paid to the State.

Dated at Madison, Wisconsin this 1st day of March, 1996.

Timothy Weeden
 Senate Finance Committee

Ben Brancel
 Assembly Finance Committee

Alan Lee
 Representative of the Attorney General

Edward D. Main
 Representative of the Secretary of Administration

Stewart Simonson
 Representative of the Governor

REFERRALS AND RECEIPT OF COMMITTEE REPORTS CONCERNING PROPOSED ADMINISTRATIVE RULES

Senate Clearinghouse Rule 95-157

Relating to substitute teacher permits, special education program aide licenses, principal licenses and general education components.

Submitted by Department of Public Instruction.

Report received from Agency, March 13, 1996.

Referred to committee on **Education and Financial Institutions**, March 14, 1996.

Senate Clearinghouse Rule 96-011

Relating to 1996-97 premium rates for the health insurance risk-sharing plan.

Submitted by Office of the Commissioner of Insurance.

Report received from Agency, March 13, 1996.

Referred to committee on **Insurance**, March 14, 1996.

MESSAGES FROM THE ASSEMBLY

By Charles Sanders, chief clerk.

Mr. President:

I am directed to inform you that the Assembly has passed and asks concurrence in:

Assembly Bill 705

Concurred in:

Senate Bill 340

Amended and concurred in as amended:

Senate Bill 119 Assembly amendment 1

MESSAGES FROM THE ASSEMBLY CONSIDERED

Assembly Bill 705

Relating to: contracting authority of the group insurance board for the administration of group insurance plans.

By Representatives F. Lasee, Urban, Ainsworth, Brandemuehl, Ziegelbauer, Green, Schneiders, Goetsch, Grothman, Wirch, R. Young, Lazich, Ott and Hanson.

Read first time and referred to committee on **Insurance**.

ADJOURNMENT

Senator Rude, with unanimous consent, asked that the Senate adjourn until Tuesday, March 19 at 10:00 A.M..

Adjourned.

10:01 A.M.

SENATE ENROLLED PROPOSALS

The Chief Clerk records:

Senate Bill 373

Senate Bill 408

Senate Bill 466

Report correctly enrolled on March 14, 1996.