

STATE OF WISCONSIN  
**Senate Journal**  
Ninety–Third Regular Session

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WEDNESDAY, November 12, 1997

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

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**INTRODUCTION AND REFERENCE OF RESOLUTIONS AND JOINT RESOLUTIONS**

Read and referred:

**Senate Joint Resolution 34**

Relating to: urging the U.S. secretary of agriculture to immediately change the federal milk pricing system.

By Senators Zien, Clausung, Schultz, Wineke, A. Lasee, Drzewiecki, Decker, Fitzgerald, Welch, Jauch, Grobschmidt, Rude, Farrow and Cowles; cosponsored by Representatives Sykora, Ott, Zukowski, R. Young, Black, Johnsrud, Huebsch, Kreibich, Hebl, Skindrud, Freese, Gard, Plouff, Hoven, Jensen, Harsdorf, Ladwig, Urban, Hasenohrl, Lorge, Gronemus, F. Lasee, Walker, Otte, Goetsch, Hahn, Gunderson, Brandemuehl, Albers, Grothman, Dobyms, Ward, Owens, Green, Turner, Vrakas, Dueholm, Hutchison, Porter, Bock and Baldwin.

To committee on **Agriculture and Environmental Resources**.

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

Read first time and referred:

**Senate Bill 346**

Relating to: various changes to the Minnesota–Wisconsin student reciprocity agreement.

By Senators Burke and Moen; cosponsored by Representative Gard.

To committee on **Education**.

**Senate Bill 347**

Relating to: the rate for the tax on cider.

By Senators Jauch, Panzer, Rude, Breske, Shibilski, Roessler and Moen; cosponsored by Representatives Hutchison, Huebsch, Meyer, Ainsworth, Gronemus, Porter, Plouff, Ryba, Seratti and Hasenohrl.

To committee on **Economic Development, Housing and Government Operations**.

**Senate Bill 348**

Relating to: evictions of tenants in buildings used for prostitution.

By Senator Plache; cosponsored by Representatives Kunicki, Hasenohrl, Dobyms, Ryba, Notestein, Baumgart, Riley, La Fave, Goetsch, Walker, Kaufert and Hanson.

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

**Senate Bill 349**

Relating to: notice to employes, retirees and dependents of cessation of health care benefits, granting rule–making authority and providing a penalty.

By Senators Plache, Burke and Roessler; cosponsored by Representatives Carpenter, Boyle, J. Lehman, Hanson, Black, Musser, Gronemus, R. Young, Bock, Robson and Plouff.

To committee on **Labor, Transportation and Financial Institutions**.

**Senate Bill 350**

Relating to: drilling beneath the beds of the Great Lakes and adjacent waters to explore for or produce oil or gas.

By Senators Cowles, Burke, Decker, Darling, Jauch and Plache; cosponsored by Representatives Hutchison, Bock, Lorge, La Fave, Kreuser, R. Young, Plale, Baumgart, Vander Loop, Ryba and Plouff.

To committee on **Agriculture and Environmental Resources**.

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**REPORT OF COMMITTEES**

The joint committee on **Information Policy** reports and recommends:

**Senate Bill 351**

Relating to: enforcement of interconnection agreements by the public service commission, protections for users of certain telecommunications services, granting rule–making authority and providing a penalty.

Introduction.

Ayes, 8 – Senators Jauch, Panzer, Rosenzweig, Shibilski and Moore; Representatives Hutchison, Kaufert and Hanson.  
Noes, 2 – Representatives Vrakas and Schneider.

To joint committee on **Information Policy**.

Robert Jauch  
Chairperson

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

KAPUSTA, JOSEPH, of Antigo, as a member of the Snowmobile Recreation Council, to serve for the term ending July 1, 2000.

Confirmation.

Ayes, 5 – Senators Clausing, Shibilski, Wirch, A. Lasee and Zien.

Noes, 0 – None.

KELL, THOMAS P., of Spooner, as a member of the Wisconsin Waterway Commission, to serve for the interim term ending March 1, 2001.

Confirmation.

Ayes, 5 – Senators Clausing, Shibilski, Wirch, A. Lasee and Zien.

Noes, 0 – None.

MALICK, CLARENCE W., of Hudson, as a member of the Minnesota–Wisconsin Boundary Area Commission, to serve for the term ending September 25, 2002.

Confirmation.

Ayes, 5 – Senators Clausing, Shibilski, Wirch, A. Lasee and Zien.

Noes, 0 – None.

ORNER, EARL L., of Barnes, as a member of the Snowmobile Recreation Council, to serve for the term ending July 1, 1999.

Confirmation.

Ayes, 5 – Senators Clausing, Shibilski, Wirch, A. Lasee and Zien.

Noes, 0 – None.

PETERSON, DEBBIE A., of Balsam Lake, as a member of the Recycling Market Development Board, to serve for the term ending May 1, 1999.

Confirmation.

Ayes, 5 – Senators Clausing, Shibilski, Wirch, A. Lasee and Zien.

Noes, 0 – None.

SCOTT, DR. DIANE, of Plover, as a member of the Veterinary Examining Board, to serve for the term ending July 1, 2001.

Confirmation.

Ayes, 5 – Senators Clausing, Shibilski, Wirch, A. Lasee and Zien.

Noes, 0 – None.

SORENSEN, DENNIS L., of St. Germain, as a member of the Snowmobile Recreation Council, to serve for the interim term ending July 1, 1998 and for the full term ending July 1, 2001.

Confirmation.

Ayes, 5 – Senators Clausing, Shibilski, Wirch, A. Lasee and Zien.

Noes, 0 – None.

STEIMEL, RICHARD J., of Dane, as a member of the Snowmobile Recreation Council, to serve for the term ending July 1, 2000.

Confirmation.

Ayes, 5 – Senators Clausing, Shibilski, Wirch, A. Lasee and Zien.

Noes, 0 – None.

TOFTNESS, JAMES, of Hayward, as a member of the Snowmobile Recreation Council, to serve for the term ending July 1, 1999.

Confirmation.

Ayes, 5 – Senators Clausing, Shibilski, Wirch, A. Lasee and Zien.

Noes, 0 – None.

**Senate Bill 285**

Relating to: the intoxicated boating law; capacity plates on boats; certificate of number, registration and titling requirements for boats; prohibitions against falsifying boat titles and other documentation; prohibitions against operating boats using unsafe methods and in certain locations; boating safety course and certificates; emergency powers of counties over navigable waters; granting rule-making authority; and providing penalties.

Introduction and adoption of Senate amendment 1.

Ayes, 5 – Senators Clausing, Shibilski, Wirch, A. Lasee and Zien.

Noes, 0 – None.

Passage as amended.

Ayes, 3 – Senators Clausing, Shibilski and Wirch.

Noes, 2 – Senators A. Lasee and Zien.

Alice Clausing  
Chairperson

The committee on **Labor, Transportation and Financial Institutions** reports and recommends:

**Assembly Bill 87**

Relating to: the requirement of giving audible signal prior to overtaking vehicles to the left.

Concurrence.

Ayes, 7 – Senators Plache, C. Potter, Moore, Decker, Zien, Darling and Farrow.

Noes, 0 – None.

**Assembly Bill 119**

Relating to: special distinguishing registration plates, payments to authorized special groups, granting rule-making authority and making an appropriation.

Concurrence.

Ayes, 7 – Senators Plache, C. Potter, Moore, Decker, Zien, Darling and Farrow.

Noes, 0 – None.

**Assembly Bill 243**

Relating to: priority of future advances under mortgages.

Concurrence.

Ayes, 7 – Senators Plache, C. Potter, Moore, Decker, Zien, Darling and Farrow.

Noes, 0 – None.

**Assembly Bill 265**

Relating to: liability for worthless checks.

Concurrence.

Ayes, 7 – Senators Plache, C. Potter, Moore, Decker, Zien, Darling and Farrow.

Noes, 0 – None.

**Assembly Bill 343**

Relating to: required emissions inspections of motor vehicles transferred to surviving spouses.

Concurrence.

Ayes, 7 – Senators Plache, C. Potter, Moore, Decker, Zien, Darling and Farrow.

Noes, 0 – None.

**Senate Bill 119**

Relating to: hours of labor and one day of rest in 7 for persons employed in the manufacture of butter, cheese or other dairy products from nonperishable milk, in the distribution of nonperishable milk or cream or in canning or freezing nonperishable agricultural commodities and granting rule-making authority.

Introduction and adoption of Senate amendment 1.

Ayes, 7 – Senators Plache, C. Potter, Moore, Decker, Zien, Darling and Farrow.

Noes, 0 – None.

Passage as amended.

Ayes, 5 – Senators Plache, C. Potter, Moore, Decker and Zien.

Noes, 2 – Senators Darling and Farrow.

**Senate Bill 180**

Relating to: the sale of advertising space in folded highway maps, the sale of highway service maps and making an appropriation.

Passage.

Ayes, 6 – Senators Plache, C. Potter, Decker, Zien, Darling and Farrow.

Noes, 1 – Senator Moore.

Kimberly Plache  
Chairperson

**PETITIONS AND COMMUNICATIONS**

**State of Wisconsin  
Department of Workforce Development**

November 4, 1997

The Honorable, The Legislature:

The purpose of this letter is to report to the Governor and Legislature regarding allegations of worker's compensation fraud reported to the Department of Workforce development.

Section 102.125, Wis. Stats., created by 1993 Wisconsin Act 81, requires the Department to record allegations of worker's compensation fraud, and if there is a reasonable basis to believe that a violation of s. 943.395, Stats., (insurance fraud) has occurred, to refer the case for prosecution by the district attorney of the county in which the violation occurred. It also requires the Department to report annually to the Governor and Legislature regarding the number of allegations and referrals, and the results of the referrals.

This report shows that the program continues to be very effective at discharging its statutory duties and combating fraud, with a minimum of public expenditure. These achievements are founded on close partnerships with insurance carriers, prosecutors, and the employer community.

Sincerely,

LINDA STEWART  
Secretary

**State of Wisconsin  
Department of Revenue**

October 17, 1997

The Honorable, The Senate:

In accordance with section 71.55(10)(e), Wis. Stats. (1995-96), I am enclosing copies of the Department of Revenue reports on distribution of enrollment cards for the Wisconsin State Medical Society "Partnercare" Program.

Sincerely,

CATE ZEUSKE  
Secretary

**State of Wisconsin  
Public Service Commission of Wisconsin**

November 4, 1997

The Honorable, The Senate:

Piepgras Holding Company was formed on April 16, 1991, when the majority of stock in St. Croix Valley Natural Gas Company was transferred to Donald Piepgras through a sale from his father. Section 196.795 (7), Stats, requires a Public Service Commission (Commission) investigation of the impact of the operation of the holding company on the utility no sooner than thirty-six months after a holding company is formed. Section 196.795 (7) (ar), Stats., provides that the Commission report its findings as a result of its investigation to the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2).

Commission staff have completed its investigation. The attached audit report discusses the scope of the audit and associated findings. In summary, no problems have appeared as a result of the formation of the holding company. Should you wish to discuss this report with Commission staff, please contact me at (608) 267-3590.

Sincerely,

ANITA SPRENGER  
Administrator  
Natural Gas Division

**State of Wisconsin  
Ethics Board**

November 11, 1997

To the Honorable the Senate:

At the direction of s. 13.685(7), *Wisconsin Statutes*, I am furnishing you with the names of organizations recently registered with the Ethics Board that employ one or more individuals to affect state legislation or administrative rules, and notifying you of changes in the Ethics Board's records of licensed lobbyists and their employers. For each recently registered organization I have included the organization's description of the general area of legislative or administrative action that it attempts to influence and the name of each licensed lobbyist that the organization has authorized to act on its behalf.

**Organizations recently registered:**

Below are the names of organizations recently registered with the Ethics Board as employing one or more individuals to affect state legislation or administrative rules.

**EMJ Association, Wisconsin**

Subject(s): Any and all rules and legislation relating to emergency medical technicians including regulations, skill, compensation, ambulances, volunteers and others.

McIntosh, Forbes

**Organization's authorization of additional lobbyists:**

The following organizations previously registered with the Ethics Board have authorized to act on their behalf these additional licensed lobbyists:

**Blue Cross/Blue Shield United of Wisconsin**

Lodes, Amy

**Dental Hygienists Assn, Wisconsin**

Tenuta, James

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  
Claims Board**

November 3, 1997

The Honorable, The Senate:

Enclosed is the report of the State Claims Board covering the claims heard on October 14, 1997.

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 October 14, 1997, upon the following claims:

	Claimant	Agency	Amount
1.	William J. Deppen	Department of Administration	\$1,533.32
2.	Gary Heinrichs	Department of Administration	\$1,776.13
3.	Cleansoils Wisconsin, Inc.	Department of Transportation	\$175,695.00
4.	Lulloff's Used Cars	Department of Transportation	\$12,850.36
5.	Terrence P. Bauer	Department of Commerce	\$149,511.92
6.	Central WI Inspection Services	Department of Commerce	\$1,049,057.00
7.	Paul B. Cogswell	Department of Revenue	\$2,678.76
8.	Robert Wilkes	Department of Revenue	\$5,429.11
9.	Bank of Homewood	Department of Natural Resources	\$178,548.40

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

	Claimant	Agency	Amount
10.	Vera J. Cross	Department of Administration	\$190.73
11.	Gerald H. Herbst Jr.	Department of Transportation	\$2,988.60
12.	Gloria S. Martell	Department of Health & Family Services	\$231.79
13.	Thomas C. Smith	Department of Corrections	\$1,188.72

In addition, the following claims, previously presented at hearing, were considered and decided:

	Claimant	Agency	Amount
14.	InterCon Construction, Inc.	Department of Natural Resources	\$5,897.17
15.	Milwaukee Police Association	State Ethics Board	\$4,500.00
16.	Annie J. Daniel	Department of Health & Family Services	\$5,000.00

The Board Finds:

1. William J. Deppen of Madison, Wisconsin claims \$1,533.32 for automobile damage allegedly caused by an accident in a state parking lot. The claimant is employed by the University of Wisconsin. The Department of Administration requested the University's assistance with a project at the Badger Road State Office Building. The claimant was scheduled to assist with this project on the afternoon of May 21, 1997. He had planned on using a UW staff vehicle to drive from his office to the Badger Road facility, however, as he was leaving, his supervisor called him into a meeting which did not adjourn until 3:40 p.m. Because he was leaving much later than originally planned, if the claimant had used a staff vehicle, which he would have had to return to the UW, he would have been late picking up his child from day care. The claimant's day care provider charges a \$1 per minute late fee; therefore, the claimant had no choice but to use his own vehicle. He parked his car in the visitor parking area at the Badger Road office and was in the building for approximately 15-20 minutes, during which time his car was apparently struck by another vehicle. When he returned to his car he noticed the damage but he was not certain to whom he should make a report and he had to leave to pick up his child, so he did not immediately report the accident. The next day the claimant contacted the Capitol Police and reported the accident. The claimant's auto insurance does not cover his vehicle for business use, however, the insurance company has temporarily agreed to pay for the damage, minus the claimant's \$250 deductible. The claimant requests reimbursement of the entire repair amount, as he does not wish to submit a claim to his insurer because his rates would increase and because his policy does not cover work related use of his vehicle. The Department of Administration recommends denial of this claim. The claimant was parked in the visitor area of an open parking lot. The officers inspected the damage to the vehicle and found no evidence that state property caused the damage. The officers also expressed doubt that the damage was caused by another vehicle hitting the claimant's car. 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 Main not participating.)

2. Gary Heinrichs of Stoughton, Wisconsin claims \$1,776.13 for vehicle damage and replacement of a car stereo. The claimant, a state employee, checked out a state vehicle from DOA Central Fleet on February 18, 1997. The fenced lot for employee vehicle parking was full and the claimant was instructed to park in the overflow parking lot. The claimant returned for his vehicle the next day and found that a rear window and his antenna were broken and his stereo was destroyed. The claimant feels the state should be held liable for these damages because he was instructed to park there. He claims \$69.22 for the broken window and \$1,706.91 for the stereo. The Department of Administration recommends denial of this claim. It is the policy of DOA Risk Management that the state will not insure any private vehicles that are parked on state property. The state does not cover damage to vehicles in any state owned parking lot, including the DOA Central Fleet area. The department believes the cost of the replacement stereo excessive and notes that the claimant has submitted no documentation showing the value of the original stereo. 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 Main not participating.)

3. Cleansoils Wisconsin, Inc. of Vadnais Heights, Minnesota claims \$175,695.00 for damages allegedly related to a highway construction project in Marathon County in 1995. The site was found to contain hazardous solid waste materials. James Peterson Sons, Inc., was the general contractor on the highway project and Central Wisconsin Engineers & Architects, Inc., was hired as a consulting firm to coordinate and monitor the waste clean up. The claimant provided soil remediation services and believes it has not been fully paid for its services. The claimant claims the balance it is owed, \$175,695, for services rendered. The Department of Transportation recommends this claim be denied. The Department had no contract with the claimant and the Department did not hire Central Wisconsin Engineers (CWE) to coordinate or monitor the claimant's work. The Department's contract was with James Peterson Sons, Inc., (Peterson). The work performed by the claimant was not completed on time or in accordance with specifications or with any reasonable standards. 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.

4. Lulloff's Used Cars of Manitowoc, Wisconsin claims \$12,850.36 for damages related to an error on a vehicle title. Mr. Iacucci purchased a truck with an Illinois title in 1994. The truck had 116,458 miles on it and the Illinois title indicated the correct mileage. When Mr. Iacucci applied for a Wisconsin title he received a title that stated the vehicle had 16,458 miles. He did not contact the state about the error. He traded the truck to Patrick Pontiac and disclosed to them that the truck had 17,117 miles, instead of the actual 117,117 miles. In January 1995 the claimant purchased the truck from Patrick Pontiac. The claimant sold the vehicle to a Mr. Reinthaler for \$10,300. The truck had many mechanical problems and Mr. Reinthaler, who suspected that the actual mileage on the vehicle was more than 17,117, complained to the claimant and the Department of Transportation. The Department did an investigation and discovered the title error. The claimant bought the truck back from Mr. Reinthaler, reimbursed him for the taxes and fees and also for the repairs he made on the vehicle. The claimant requests reimbursement as follows: \$10,300 cost of the truck,

\$515.00 sales tax, \$88.50 fees, \$1,769.50 for reimbursement of Mr. Reinthaler's repair bills. In addition, the claimant requests reimbursement for the interest that it is paying on the floor plan of the truck in the amount of \$126.72 per month. It has come to the Department's attention that Zale Company, the Illinois company that originally owned the truck, inadvertently checked the wrong box when reassigning the certificate of title. The Department admits there was negligence on its part for not properly processing the title as in excess of its mechanical limits, as indicated in error when Zale sold the vehicle. However, the claim is based on the belief that the claimant has a vehicle with over 100,000 miles, that he thought had original miles. We now know that the vehicle does in fact have the original miles on it. Therefore, the Department recommends denial of this claim. The Board concludes the claim should be paid in the reduced amount of \$5,000.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Transportation fund, unappropriated revenue.

5. Terrence P. Bauer of Custer, Wisconsin claims \$148,511.92 for loss of wages related to the loss of contracts by his business. Since 1993, the Department of Commerce and its predecessor, the Department of Industry, Labor & Human Relations had contracted with Central Wisconsin Inspection Services, Inc. (CWI) as a local program operator to perform tank inspection services. The claimant is one of the owners of CWI and before the creation of CWI, was employed by DILHR. Upon leaving his position with the state because of an alleged potential conflict of interest with his tank inspection business, the claimant entered into an agreement with DILHR. In this agreement DILHR stated it would not discriminate against CWI in any manner regarding CWI's contracts. The agreement also provided that DILHR would proceed with the award to CWI of tank inspection contracts for Bid #JK-1604 for all jurisdictions in which CWI was the low bidder. DILHR further agreed that if, for any reason, any contracts in the bid were not awarded when CWI was the low bidder, the claimant would be entitled to be reinstated to his civil service position with full wages and benefits for the period between his resignation and his reinstatement. On July 29, 1996, CWI was notified that its contracts were being terminated effective October 30, 1996. CWI claims that it became aware of a significant defect in DILHR's bid awarding process in September 1996. The claimant alleges that DILHR and Commerce failed to identify certain tanks within the category of federally regulated out of service or abandoned tanks, which should have been bid on and paid for. As a result, the claimant alleges that CWI was not awarded additional bid inspections contracts under Bid #JK-1604 where CWI was or would have been the low bidder. The claimant states that the loss of contracts by CWI has resulted in a loss of livelihood. Pursuant to his agreement with the state, the claimant requests reimbursement of full wages and benefits since his resignation from the state in the amount of \$149,511.92. The Department of Commerce recommends denial of this claim. The claimant's theory of breach of contract is that Commerce was required to retroactively reassess the impact of subsequent changes in the number of tanks registered within a certain category of tanks on bids that had been submitted one or more years before, and then to readjust the jurisdictions accordingly. Nothing within the resignation agreement or any other binding contract supports this interpretation of Commerce's obligation under the agreement. 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.



6. Central Wisconsin Inspection Services of Custer, Wisconsin claims \$1,049,057.00 for lost profits related to termination of tank inspection contracts with the Department of Commerce and its predecessor, the Department of Industry, Labor and Human Relations. Since July 1994 DILHR and Commerce have failed to award several bid inspection contracts under Bid #JK-1604 in jurisdictions where the claimant was the low bidder, in alleged breach of an agreement with Terry Bauer, one of the owners of the claimant company. As part of this agreement, DILHR agreed not to discriminate against the claimant in any manner regarding its contracts. On October 24, 1996, the claimant states that it first became aware of a significant defect in the bid awarding process conducted by DILHR and Commerce, in that DILHR and Commerce failed to identify a particular category of tanks, which should have been bid on and paid for. As a result, the claimant claims it was not awarded additional bid inspection contracts under Bid #JK-1604 where the claimant was or would have been the low bidder. Prior to October 1994, the claimant and other contractors had been charging a fee for the supervision of the removal of underground storage tanks. Thereafter a Cease and Desist Order regarding the charging of such fees was issued by DILHR. Subsequently, several appeals were filed by the claimant and others regarding said Cease and Desist Order, which continues to date. In July 1996 the claimant was notified that its contracts were being terminated effective October 30, 1996. The claimant alleges that this termination is the culmination of a pattern of disparate and discriminatory treatment of the claimant by various DILHR and Commerce employees, based on personal animosities against Terry Bauer and also in retaliation for the filing of a separate lawsuit by the claimant against DILHR. Further, the claimant alleges that by such actions, the state has breached the claimant's contracts with the Department of Commerce and have interfered with the claimant's contracts with DILHR. The claimant states that the loss of the contracts will render the business defunct, which will in turn, result in the loss of livelihood for the shareholders and employees of the claimant. The claimant seeks monetary compensation for all losses resulting from the alleged wrongful termination of its contracts. The Department recommends denial of the claim. The claimant's theory of breach of contract is that Commerce was required to retroactively reassess the impact of subsequent changes in the number of tanks registered within a certain category of tanks on bids that had been submitted one or more years before, and then to readjust the jurisdictions accordingly. Nothing within the resignation agreement or any other binding contract supports this interpretation of Commerce's obligation under the agreement. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

7. Paul B. Cogswell of Gurnee, Illinois claims \$2,678.76 for income taxes incorrectly submitted to the Wisconsin DOR by his employer. The claimant last lived in Wisconsin in 1986 and has since lived in Illinois. In 1989, the claimant's employer, Marshall Field's, made an error pursuant to a change in their payroll system and submitted the claimant's withheld taxes to Wisconsin. In 1991, the State of Illinois requested the 1989 taxes, which they had not received. The claimant paid the taxes to Illinois, however, he was not able to discover where his withholdings had gone because Marshall Field's was sold into new ownership and the needed records could not be located. The claimant had not been a Wisconsin resident since 1986 and, therefore, never thought that Wisconsin had received his withholdings. The claimant understands that section 71.75(2), Wis. Stats., states that a claim for refund must be made within

four years, however, he points to the fact that these funds were not paid by a resident nor pursuant to the filing of a tax return by a legal resident of the state. The claimant therefore believes the funds should be considered escheatable property and remain in trust in perpetuity by Wisconsin pursuant to a request being made by the rightful owner for the return of the property. The Department of Revenue recommends denial of this claim. Section 71.75(2), Wis. Stats., provides that a claim for refund must be made within four years of the unextended due date of the return. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles. The Board further concludes this claim would be more appropriately pursued against Marshall Fields, or its assigns.

8. Robert Wilkes of Elcho, Wisconsin claims \$5,429.11 for return of a levy against his account as well as a 1991 Homestead tax credit. The claimant's financial records were misplaced when he was hospitalized. He was again hospitalized in 1994 during which time his home was sold and his records put in storage. The Department of Revenue issued assessments for the claimant's 1991 and 1992 income taxes in October 1994. In 1996 the Department levied \$4,269.11 from the claimant's bank account. The claimant filed his 1991 and 1992 returns in February 1997, he did not owe any taxes but was denied his \$1,160.00 homestead credit for 1991 because the return was filed four years after the original due date. The claimant filed his taxes as soon as he was able and requests that he be reimbursed for his overpayment and homestead credit. The Department of Revenue recommends the claim be denied. Section 71.75(5), Stats., prohibits the Department from refunding money that was applied to the original assessments for 1991 and 1992 since no refund was claimed within the prescribed two-year time period. The Board concludes the claim should be paid in the reduced amount of \$2,100 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Claims Board appropriation s. 20.505 (4)(d), Stats.

9. The Bank of Homewood of Homewood, Illinois claims \$178,548.40 for payment of waste tire reimbursement grant money. The claimant files this claim on behalf of National Tire Services (NTS). NTS has filed for bankruptcy and the claimant is a secured creditor of NTS. From 1992 through 1995, NTS participated in the DNR's grant program for processors of waste tires. Under this program, certified processors were eligible for specified payments for waste tires picked up in Wisconsin and delivered to acceptable end users. NTS filed an application to receive payment for waste tires picked up between 1992 and 1994. The claimant states that the application and information contained in DNR's records established NTS' entitlement to a payment of not less than \$178,548.40. Furthermore, NTS picked up additional tires in 1995 and delivered these tires to appropriate end users. While NTS did not file and application for these tires, NTS should be entitled to payment for all qualifying tires picked up in 1995. The claimant contends that NTS' application is complete when supplemented with certifications received from WP&L and other information contained in DNR's records. Based on its pre-bankruptcy loan documents and/or the financing orders approved by the bankruptcy court, the claimant has a first priority security interest in the monies owed to NTS by DNR. Finally, the claimant asserts that the state's setoff claim predicated on NTS' alleged failure to pay withholding and employment taxes is impermissible under bankruptcy law (11 USC s. 553). The Department of Natural Resources recommends denial of this claim. First, the original grant application received from NTS in February 1995 was deficient and the amount requested

unsubstantiated. Second, liens and other acknowledged claims, including setoffs to the state for unpaid taxes have not been satisfied. Third, monies appropriated by the Legislature for the waste tire program have been exhausted and the remaining monies collected have reverted to the General Fund. Finally, payment of this claim might be viewed as precedent by the 25 other businesses that did not receive full grant funding for 1995 because of the reversion of monies to the General Fund. 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.)

10. Vera J. Cross of Beloit, Wisconsin claims \$190.73 for medical bills and new eyeglasses. On May 1, 1997, while visiting the Executive Residence in Madison, the claimant tripped and fell and broke her glasses. She alleges that the cause of her fall was broken concrete in the driveway of the residence. The claimant had to have her eyes examined before she could get new glasses. She requests reimbursement for the eye exam and her new glasses. The Department of Administration recommends denial of this claim. The officer on duty at the Executive Residence on the day of the accident has stated that the fall took place outside the fence of the residence. He also indicated that the cause of the fall was the difference between the Maple Bluff road and the lawn adjacent to the road. The claim that this was caused by concrete that was in disrepair is unfounded, as an inspection of the concrete at the residence did not produce any area that needed repair. 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.)

11. Gerald J. Herbst, Jr. of Cedarburg, Wisconsin claims \$2,988.60 for damage to the basement of his home, which was allegedly caused by nearby road construction. In 1992 the Department of Transportation began a road construction project near the claimant's home. The claimant noticed that as equipment passed his home, the whole house shook to the point where pictures fell off the walls. Immediately after completion of the project the claimant began noticing cracks in the basement floor. In the spring of 1993 water began coming up through the cracks. The claimant tried to remedy the problem himself by patching the cracks. The water problem returned in the spring of 1994 and the claimant realized he needed professional repair. He contacted the Department to try and get their assistance. He states that he was passed around from office to office, including that of the project contractor, Musson Brothers. In 1996 he was finally referred to Barbara Bird, the Department's Assistant General Counsel. The claimant alleges that in spring of 1997 a Department representative came to the claimant's house and acknowledged that a problem existed. The claimant had the damage to his basement professionally repaired and requests reimbursement of his repair costs. The claimant states that the only thing that occurred between having cracks in his basement and not having cracks, was the highway project, therefore it must have caused the cracks. The Department finds no evidence to support his theory and recommends denial of the claim. 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. Gloria S. Martell of Chippewa Falls, Wisconsin claims \$231.79 for vehicle damage caused by a resident of Northern Wisconsin Center, where the claimant is employed. While walking from one building to another a resident became

agitated, ran over to the claimant's car, broke off the antenna and scratched the hood. The resident has a history of this sort of behavior. The claimant's insurance covers collision damage only. She requests reimbursement for the cost to repair her vehicle and replace the antenna. Under similar circumstances, even though there is no showing of negligence, the Department recommends that claimants be reimbursed up to the amount of their insurance deductible. In this case, the claimant chose not to insure her vehicle against this type of damage so there is no deductible. The state cannot assume the responsibility of an insurance company. However, based on equitable principles, the department recommends the claimant be reimbursed \$100. The Board concludes the claim should be paid in the reduced amount of \$100.00 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 & Family Services appropriation s. 20.435 (2)(gk), Stats.

13. Thomas C. Smith of Green Bay, Wisconsin claims for a lost television, which he alleges was sent to a third party without his authorization. The claimant was transferred from Oshkosh Correctional Institution to Fox Lake Correctional Institution. When he arrived at FLCI, he noticed that his television was missing. He contacted OCI and was told that they had mailed his TV to a Lula Bass because the TV had a timer and was not allowed at FLCI. The claimant states that he was never contacted about disposing of the television, contrary to OCI rules and that he did not give his approval for them to send the TV to Ms. Bass. The address to which OCI mailed the TV was out of date; Ms. Bass had moved several months earlier. The claimant has not been able to recover his television. He requests \$188.72 for the TV. The claimant also requests \$500 punitive damages and \$500 for pain and suffering because of the "tremendous pain and heartache—sleepless nights and loss of appetite from the frustration of trying to recover [his] TV." The Department of Corrections recommends denial of this claim. The claimant's property was inventoried and mailed out in March 1993 and OCI appropriately relied on his official approved visitors' list in shipping the TV to someone who had picked up his property in the past. There is no state employee negligence nor is there an 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 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.

14. InterCon Construction of Madison, Wisconsin claims \$5,879.17 for costs incurred responding to a diesel spill in March 1993 near Janesville. The claimant was contacted by the Department of Natural Resources to perform clean-up work at the site of an overturned semi-tractor/trailer, which was leaking diesel fuel. The claimant responded immediately and by its prompt assistance, helped to prevent a much greater environmental problem. The Department stated that it was acting on behalf of the owner of the vehicle, Interstate Transit, Inc. of Marion, Indiana when it requested the claimant's assistance. The owner of the vehicle is financially unable to pay the bill and their insurance company has refused coverage. The claimant has employed legal counsel to try and collect payment from the vehicle owner but has only been able to collect \$200. The claimant requests reimbursement of its costs from the clean-up. The claimant is willing to reduce its claim to \$5,000 in order to expedite payment. The Department recommends payment of \$5,000 based on equitable principles. The Board concludes the claim should be paid in the reduced amount of \$4,000.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Natural Resources appropriation s. 20.370 (2) (dv), Stats.

15. Milwaukee Police Association claims \$4,500 for recovery of a forfeiture imposed by the Ethics Board. The claimant, a lobbying principal, forfeited \$4,500 for making a campaign contribution of the same amount, through a Political Action Committee, outside a "window period" established by the Ethics Board. The Ethics Board imposed this forfeiture based on an opinion that a PAC, which is established by a principal, may only contribute to a candidate during a "window period" between June 1 and the date of the general election. On February 23, 1994, Dane County Circuit Court struck down the Ethics Board ruling with regards to the "window period" campaign contributions, holding that the PAC was not barred from making a contribution outside the "window period" because the PAC does not come within the definition of either "lobbyist" or "principal" and therefore is not subject to restrictions imposed on lobbyists or principals. The claimant's situation is the same as that in the referenced case, therefore, the claimant requests return of the forfeiture imposed by the Ethics Board. The Ethics Board recommends denial of this claim. The claimant voluntarily paid the forfeiture in connection with its acceptance of the Board's settlement offer and the claimant's acceptance of the Settlement Agreement. As a result, the Ethics Board did not conduct an investigation of the matter or proceed to a hearing to make factual determinations. The claimant had every opportunity to allow a full investigation of the matter and to present its legal and factual arguments to an independent hearing examiner. It could have sought review of any adverse decision of the Circuit Court and raised the same legal issues as in the above referenced case. It chose not to do so and instead, now seeks to substitute the Claims Board as its preferred forum. 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 Lee not participating.)

16. Annie Daniel of Racine, Wisconsin claims \$5,000 for attorney's fees incurred when the claimant was charged with abuse of a resident by the Racine County District Attorney. The Claimant is employed at Southern Wisconsin Center and was accused of striking a resident while on duty on October 9, 1992. She contracted with legal counsel for a flat fee of \$5,000 to defend her against the charge. The case was dismissed after a preliminary hearing on the grounds that the allegations were not plausible. The Racine County DA and the Department of Health & Family Services recommend denial of this claim. Under s. 775.11, Stats., the claimant is entitled to compensation only if she is found not guilty. The Board concludes the claim should be paid in the reduced amount of \$3,500 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Claims Board appropriation s. 20.505 (4) (d), Stats. The Board concludes:

1. The claims of the following claimants should be denied:  
 William Deppen  
 Gary Heinrichs  
 Cleansoils Wisconsin, Inc.  
 Terrence P. Bauer

Central Wisconsin Inspection Services  
 Paul B. Cogswell  
 Bank of Homewood  
 Vera J. Cross  
 Gerald H. Herbst, Jr.  
 Thomas C. Smith  
 Milwaukee Police Association

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

Lulloff's Used Cars	\$5,000.00
Robert E. Wilkes	\$2,100.00
Gloria S. Martell	\$100.00
InterCon Construction, Inc.	\$4,000.00
Annie Daniel	\$3,500.00

Dated at Madison, Wisconsin this 30th day of October 1997.

ALAN LEE, CHAIR  
 Representative of the Attorney General  
 EDWARD D. MAIN, SECRETARY  
 Representative of the Secretary of Administration  
 SHERYL ALBERS  
 Assembly Finance Committee  
 BRIAN BURKE  
 Senate Finance Committee

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**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 93**
- Assembly Bill 118**
- Assembly Bill 167**
- Assembly Bill 273**
- Assembly Bill 340**
- Assembly Bill 342**
- Assembly Bill 392**
- Assembly Bill 419**
- Assembly Bill 455**
- Assembly Bill 502**

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**MESSAGES FROM THE ASSEMBLY  
 CONSIDERED**

**Assembly Bill 93**

Relating to: abuse of vulnerable adults and providing penalties.

By Representatives Krusick, Ainsworth, Black, Bock, Carpenter, Dobyns, Freese, Gunderson, Hahn, Hasenohrl, Kelso, Kreuser, Ladwig, La Fave, J. Lehman, Meyer, Musser, Notestein, Olsen, Ott, Ourada, Plale, R. Potter, Powers, Riley, Ryba, Seratti, Springer, Steinbrink, Turner, Walker and Wasserman; cosponsored by Senators Buettner, Drzewiecki, Farrow, Huelsman, Plache, Rosenzweig and Wirch.

Read first time and referred to committee on **Judiciary, Campaign Finance Reform and Consumer Affairs.**



**Assembly Bill 118**

Relating to: qualified domestic relations orders under the Wisconsin retirement system.

By Representatives R. Young, Baldwin, Boyle, Gronemus, La Fave, Notestein, Robson and Turner; cosponsored by Senators Grobschmidt, Buettner and Adelman.

Read first time and referred to committee on **Economic Development, Housing and Government Operations**.

**Assembly Bill 167**

Relating to: changing the name of a minor.

By Representatives Foti, Ladwig, Handrick, Riley, Duff, Dobyns, Goetsch, Gronemus, Williams, Hutchison, Lorge, Musser, M. Lehman, Cullen, Hahn and Ward; cosponsored by Senators Buettner, Farrow, Welch, Panzer and Rosenzweig.

Read first time and referred to committee on **Judiciary, Campaign Finance Reform and Consumer Affairs**.

**Assembly Bill 273**

Relating to: the regulation of dental hygienists, creating a dental hygienists affiliated credentialing board, granting rule-making authority and providing penalties.

By Representatives Powers, Robson, Zukowski, Hanson, Kreibich, Turner, Hahn, Musser, Bock, Vander Loop, Notestein, Olsen, Johnsrud, Kaufert and J. Lehman; cosponsored by Senators Clausing, Zien, Plache and Risser.

Read first time and referred to committee on **Health, Human Services, Aging, Corrections, Veterans and Military Affairs**.

**Assembly Bill 340**

Relating to: exempting certain vehicles that are used primarily off a highway from vehicle registration

By Representatives Ainsworth, Albers, Gard, Goetsch, Grothman, Hahn, Musser, Nass, Olsen, Ott, Owens, Powers, Seratti, Sykora, Ward and Skindrud; cosponsored by Senators A. Lasee and Zien.

Read first time and referred to committee on **Labor, Transportation and Financial Institutions**.

**Assembly Bill 342**

Relating to: rights of victims of crime, granting rule-making authority and providing a penalty.

By Representatives Krug, Green, Rutkowski, Duff, R. Potter, Schneider, Brandemuehl, Baumgart, Dobyns, Black, Freese, Boyle, Hahn, Carpenter, Harsdorf, Coggs, Seratti, Hanson, Sykora, Hasenohrl, Underheim, Ryba, Walker, Springer, Travis, Huebsch, Turner, Vander Loop, Hutchison, Wasserman, Kelso, L. Young, Ladwig, Ziegelbauer, F. Lasee, Hebl, Lazich, Huber, J. Lehman, Kreuser, M. Lehman, La Fave, Lorge, Meyer, Musser, Morris-Tatum, Olsen, Notestein, Plale, Ourada, Plouff, Porter, Riley, Robson, Albers and Bock; cosponsored by Senators Moore, Huelsman, Adelman, Plache, Welch, C. Potter, Wirch, Rosenzweig, Moen, Grobschmidt and Drzewiecki, by request of Attorney General James Doyle; Crime Victims Council; Wisconsin Coalition Against Sexual Assault; Parents of Murdered Children; Mothers Against Drunk Driving; Wisconsin Chiefs of Police Association; Wisconsin Victim/Witness Professionals Association; Coalition of Wisconsin Aging Groups; Wisconsin Merchants Federation; AFSCME, Locals 3021 and 3394 (Correctional Officers).

Read first time and referred to committee on **Judiciary, Campaign Finance Reform and Consumer Affairs**.

**Assembly Bill 392**

Relating to: the farm mediation and arbitration program, eliminating the farm mediation and arbitration board, the farmer assistance program, exit from and entry into the dairy industry, granting rule-making authority and making an appropriation.

By Representatives Ott, Otte, Brandemuehl, Sykora, Ward, Hahn, Ainsworth, Powers and Owens; cosponsored by Senator Roessler.

Read first time and referred to committee on **Agriculture and Environmental Resources**.

**Assembly Bill 419**

Relating to: motor vehicle pursuit by law enforcement officers, training of law enforcement officers, requiring the exercise of rule-making authority and providing a penalty.

By Representatives Hanson, Goetsch, Musser, Travis, R. Potter, Cullen, Notestein, R. Young, Ziegelbauer, Murat, Hutchison, Lazich, Olsen, Freese, Nass, Robson, Plouff, Skindrud, M. Lehman, Baldwin, Albers, Owens, Wasserman, Krusick, Hasenohrl, Bock, Gronemus, Staskunas and Walker; cosponsored by Senators Adelman, Huelsman, Drzewiecki, Rude, Roessler, Clausing, Farrow, Risser, Plache, Grobschmidt and Zien.

Read first time and referred to committee on **Judiciary, Campaign Finance Reform and Consumer Affairs**.

**Assembly Bill 455**

Relating to: the making of restitution by a juvenile.

By Representatives Goetsch, Ladwig, Dobyns, Ziegelbauer, Olsen, Musser, Turner, Hahn, Freese, La Fave, Powers, Green, Walker, Owens, Vrakas, Gunderson, Otte, Ainsworth, Sykora, Hasenohrl, Staskunas, Springer and Seratti; cosponsored by Senators Drzewiecki, C. Potter, Huelsman, Welch, Darling, Roessler, Schultz, Weeden and Rosenzweig.

Read first time and referred to committee on **Judiciary, Campaign Finance Reform and Consumer Affairs**.

**Assembly Bill 502**

Relating to: regulation of grain dealers and grain warehouse keepers.

By Representatives Sykora, Ott, Gronemus, Springer and Zukowski; cosponsored by Senators Shibilski, Zien and Welch.

Read first time and referred to committee on **Agriculture and Environmental Resources**.

**Senate Joint Resolution 32**

Relating to: providing that the proceeds of the state lottery, all moneys received by the state under Indian gaming agreements, other than moneys used to regulate and enforce the provisions of the Indian gaming agreements, and all moneys received by the state that are attributable to pari-mutuel on-track betting must be used for reducing property taxes imposed on principal dwellings by creating property tax credits and may be used for reducing rent constituting property taxes; and providing that the distribution of the proceeds of the state lottery, moneys received by the state under Indian gaming agreements and all moneys received by the state that are attributable to pari-mutuel on-track betting are not subject to the uniformity requirement of [article VIII, section 1, of the Wisconsin Constitution](#) (first consideration).

**Senate Joint Resolution 32** was withdrawn from the committee on **Economic Development, Housing and Government Operations** and referred to the committee on **Judiciary, Campaign Finance Reform and Consumer Affairs** pursuant to Senate Rule 46 (1) (c).

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**SENATE ENROLLED PROPOSALS**

The Chief Clerk records:

- Senate Bill 31**
- Senate Bill 316**
- Senate Bill 323**
- Senate Bill 343**
- Senate Bill 344**

Report correctly enrolled on November 10, 1997.

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**SENATE ENROLLED PROPOSALS**

The Chief Clerk records:

- Senate Bill 327**

Report correctly enrolled on November 11, 1997.

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**AMENDMENTS OFFERED**

Senate amendment 1 to **Senate Bill 321** offered by Senator Decker.

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**LEGISLATIVE REFERENCE BUREAU  
CORRECTIONS**

**CORRECTIONS IN:**

**SENATE SUBSTITUTE AMENDMENT 1,  
TO 1997 SENATE BILL 218**

Prepared by the Legislative Reference Bureau  
(Wednesday, November 5, 1997)

**1.** Page 24, line 21: substitute "632.7465" for "633.7465".

**CORRECTIONS IN:**

**1997 SENATE BILL 327**

Prepared by the Legislative Reference Bureau  
(November 11, 1997)

In enrolling, the following correction was made:

**2.** Page 48, line 3: after "6,625.00" insert "to".

**CORRECTIONS IN:**

**ASSEMBLY AMENDMENT 3,  
TO 1997 ASSEMBLY BILL 342**

Prepared by the Legislative Reference Bureau  
(November 7, 1997)

In engrossing, the following correction was made:

**3.** Page 1, line 2: before "period" insert "last".