



STATE OF WISCONSIN

Senate Journal

Ninety–Fifth Regular Session

10:00 A.M.

THURSDAY, October 18, 2001

The Senate met.

The Senate was called to order by Senator Fred Risser.

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 48

Relating to: the life and public service of John Quentin Radcliffe.

By Senator Moen; cosponsored by Representative Gronemus.

To committee on **Senate Organization**.

INTRODUCTION, FIRST READING AND REFERENCE OF BILLS

Read first time and referred:

Senate Bill 284

Relating to: certified capital investment limitations, qualified business requirements, and reviews of certified capital company financial statements.

By Senators Moore, Plache, Burke, M. Meyer, Kanavas, Erpenbach, Hansen, Wirch, Darling, George, Shibilski, Breske, Roessler, Welch, Huelsman, Schultz and S. Fitzgerald; cosponsored by Representatives Ward, Lippert, Vrakas, Townsend, Hundertmark, Gronemus, Hahn, Sykora, Walker, Duff, Ladwig, Owens, D. Meyer, Krawczyk, Boyle, Olsen, M. Lehman, Miller, Staskunas, Plale, Gundrum, Ott, Balow, Colon, Starzyk, Seratti, Berceau, La Fave, Jensen, Turner, Young, Krug, Shilling, Wasserman, Williams, Freese, Suder, Kedzie, Kestell, Pettis, Richards, Huebsch, Jeskewitz, Musser and Riley.

To committee on **Economic Development and Corrections**.

Senate Bill 285

Relating to: prohibiting the sale of lottery tickets or shares and requiring a referendum.

By Senators Welch and Lazich; cosponsored by Representative Huebsch.

To committee on **Universities, Housing, and Government Operations**.

Senate Bill 286

Relating to: creating an individual income tax exemption for pay received from the federal government by members of

a reserve component of the armed forces participating in Operation Enduring Freedom.

By Senators Lazich, Breske, S. Fitzgerald, Grobschmidt, Hansen, Plache, Roessler, Schultz and Welch; cosponsored by Representatives Owens, Ainsworth, Albers, Boyle, Duff, Freese, J. Fitzgerald, Gronemus, Grothman, Gunderson, Gundrum, Hoven, Jeskewitz, Kestell, Krawczyk, Ladwig, La Fave, Lassa, Leibham, McCormick, Musser, Nass, Petrowski, Pettis, Ryba, Starzyk, Suder, Sykora and Turner.

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

REPORT OF COMMITTEES

The committee on **Human Services and Aging** reports and recommends:

Senate Bill 113

Relating to: the use of bicycle helmets and providing a penalty.

Passage.

Ayes, 4 – Senators Robson, Moore, Wirch and Hansen.

Noes, 3 – Senators Roessler, Welch and Kanavas.

Senate Bill 178

Relating to: administering drugs to pupils in compliance with instructions of practitioners.

Passage.

Ayes, 7 – Senators Robson, Moore, Wirch, Hansen, Roessler, Welch and Kanavas.

Noes, 0 – None.

Judith Robson
Chairperson

The committee on **Insurance, Tourism, and Transportation** reports and recommends:

Senate Bill 242

Relating to: a certain highway improvement project on USH 51 in the city of Madison.

Passage.

Ayes, 5 – Senators Breske, Grobschmidt, Baumgart, A. Lasee and Schultz.

Noes, 0 – None.

Senate Bill 275

Relating to: proposed actions regarding motor vehicle franchises.

Passage.

Ayes, 5 – Senators Breske, Grobschmidt, Baumgart, A. Lasee and Schultz.

Noes, 0 – None.

Roger Breske
Chairperson

The committee on **Labor and Agriculture** reports and recommends:

Senate Bill 232

Relating to: authorizing the department of workforce development to order a person who discriminates in promotion, compensation, or in terms, conditions, or privileges of employment on the basis of sex, race, color, national origin, or ancestry to pay compensatory and punitive damages and an assessment, directing the secretary of workforce development to appoint a committee to study wage disparities between men and women and between minority group members and nonminority group members, and making an appropriation.

Passage.

Ayes, 3 – Senators Hansen, Decker and Baumgart.

Noes, 2 – Senators A. Lasee and Harsdorf.

Senate Bill 276

Relating to: various changes in the unemployment insurance law, appointment of temporary reserve appeal tribunals, requiring the exercise of rule-making authority, and making an appropriation.

Passage.

Ayes, 5 – Senators Hansen, Decker, Baumgart, A. Lasee and Harsdorf.

Noes, 0 – None.

David Hansen
Chairperson

PETITIONS AND COMMUNICATIONS

**State of Wisconsin
Department of Administration**

October 15, 2001

The Honorable, The Legislature:

This report presents statements of fund condition and operations (budgetary basis) of the State of Wisconsin for the fiscal year ended June 30, 2001. This satisfies the requirements of sec. 16.40(3), Wisconsin Statutes. Displayed are major sources of revenues and major categories of expenditures for the General Fund and other funds compared to the prior year.

The General Fund has an undesignated balance of \$207.5 million as of the end of the fiscal year. This is \$58.4 million higher than the \$149.1 million estimate that was projected in the final Chapter 20 fund condition statement. In addition, this reflects only minor variations from the gross ending balance of \$197.8 million estimate for fiscal year 2001 by the Legislative Fiscal Bureau in its summary of [2001 Act 16](#).

General-purpose revenue taxes were \$10.063 billion compare to \$10.946 billion in the prior year, a decrease of \$883 million or 8.1 percent. This decrease is the result of reductions in income tax rates and other changes to state tax laws made in [1999 Wisconsin Act 9](#). General-purpose revenue expenditures, excluding fund transfers, were \$11.078 billion compared to \$11.270 billion in the prior year, a decrease of \$192 million or 1.7 percent. This reduction reflects the one-time sales tax rebate distributed in fiscal year 2000. If the rebate is excluded, fiscal year 2001 spending increased by \$506.9 million or 4.8 percent.

General-purpose revenue spending increases in fiscal year 2001 were largely driven by increases in three areas: School Aids increased by \$239.9 million, Corrections increased by \$94.1 million, and UW System increased by \$93.2 million.

In fiscal year 2001, the State of Wisconsin continued to devote the major share of state tax collections to assistance to local

school districts, municipalities and counties. Local assistance accounted for 60.3 percent of total general purpose revenue spending. Aid payments to individuals and organizations represented 16.1 percent of total general purpose revenue expenditures. The University of Wisconsin accounted for 9.4 percent of total general purpose revenue spending and state operations spending for all other state agencies accounted for 14.2 percent of the total.

The State of Wisconsin expects to publish its comprehensive annual financial report in December 2001. The report will be prepared under generally accepted accounting principles.

Sincerely,

GEORGE LIGHTBOURN

Secretary

**State of Wisconsin
Department of Administration**

October 8, 2001

The Honorable, The Legislature:

This report is transmitted as required by sec. 20.002(11)(f) of the Wisconsin Statutes, (for distribution to the appropriate standing committees under sec. 13.172(3) Stats.), and confirms that the Department of Administration has found it necessary to exercise the “temporary reallocation of balances” authority provided by this section in order to meet payment responsibilities and cover resulting negative balances during the month of September 2001.

On September 17, 2001 the **General Fund** balance was –\$99.7 million. The following day, September 18, 2001 the **General Fund** balance reached a positive \$83.9 million. The shortfall was due to the difference in the timing of revenues and expenditures and the delay in issuing the 2001 Operating Note.

The General Fund shortfall was not in excess of the statutory interfund borrowing limitation and did not exceed the balances of the Funds available for interfund borrowing.

The distribution of interest earnings to investment pool participants is based on the average daily balance in the pool and each fund’s share. Therefore, the monthly calculation by the State Controller’s Office will automatically reflect the use of these temporary reallocations of balance authority.

Sincerely,

GEORGE LIGHTBOURN

Secretary

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

**State of Wisconsin
Department of Public Instruction**

October 16, 2001

The Honorable, The Legislature:

Enclosed is a copy of “The 1999-2000 Inter-District Public School Open Enrollment Program: A Report to the Governor and the Legislature,” as required by sec. 118.51 (15)(c), Wis. Stats. The report is submitted to you as required by sec. 13.172 (3), Wis. Stats.

Sincerely,

ELIZABETH BURMASTER

State Superintendent

Referred to committee on **Education**.

**State of Wisconsin
Claims Board**

October 11, 2001

The Honorable, The Senate:

Enclosed is the report of the State Claims Board covering the claims heard on September 21, 2001.

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

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

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

Sincerely,

JOHN E. ROTHSCHILD
Secretary

STATE OF WISCONSIN CLAIMS BOARD

The State Claims Board conducted hearings in the State Capitol, Grand Army of the Republic Memorial Hall, Madison, Wisconsin, on September 21, 2001, upon the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. Jerome Schmidt	Transportation	\$7,072.20
2. Check Cashing Corporation	Health and Family Services	\$9,983.78
3. Shirley A. Anderson	Health and Family Services	\$1,800.00
4. Scott Rouse	Revenue	\$1,241.00
5. Craig R. Pajari	Revenue	\$3,229.94
6. Arthur W. Johnson	Revenue	\$7,501.01

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

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
7. Richard W.Hennecke	Employe Trust Funds	\$5,000.00
8. Ronald P. Bristol	Administration	\$250.00
9. Amy Merrill	Corrections	\$100.00
10. Randall & Cindy Jaskot	Revenue	\$303.49
11. PACE Local 7-0765	Revenue	\$5,326.51
12. Kenneth C. Ketterer	Revenue	\$7,487.20

The Board Finds:

1. Jerome Schmidt of Brookfield, Wisconsin claims \$7,072.20 for property damage allegedly incurred during the Highway 33 construction project in West Bend in 1997. The claimant states that in July 1999 the floor drain in his building backed up and he began to experience drainage problems. The claimant believes that these problems are caused by damage to the sewer lateral leading from his building. The claimant states that he hired plumbers to excavate the sewer lateral and found that the pipe was damaged under the sidewalk, which had been installed as part of the construction project. The claimant also states that, prior to the project, his sewer lateral was attached to the old storm sewer but that the lateral was not reconnected after the project was complete. The claimant states that, according to a letter from the City of West Bend, a new storm sewer main was installed but the sanitary sewer main was not affected, contrary to the assertion by DOT that a new sanitary sewer main was installed. The claimant alleges that there is no evidence that any damage to the building lateral was caused by his excavator as DOT alleges. He states that the lateral was excavated north of the sidewalk, that the damage to the lateral was underneath the sidewalk, and that there was no damage to the lateral in the area of excavation. He provides affidavits from four individuals who were present during the excavation to support these assertions. The claimant points to the fact that DOT's own records show that the contractor apparently damaged the sewer lateral while installing a new water lateral nearby and that they supposedly repaired the damage. The

claimant has received no documentation from DOT regarding the exact nature of this damage or the alleged repairs. The claimant states that, contrary to DOT's assertion, he never received a letter regarding the construction project and points to the fact that DOT has been unable to produce any documentation of the letter that was allegedly sent. The claimant believes that DOT's contractor damaged the sewer lateral, failed to repair the damage and did not connect the claimant's lateral to the new storm sewer as they should have. He requests reimbursement of \$3,472.20 for his expenses to determine the cause of the drainage problems and \$3,600.00 for the estimated costs of repairing the lateral and properly connecting it to the storm sewer.

DOT recommends denial of this claim. DOT does not believe that the sidewalk or parking lot construction associated with the highway project would have affected the claimant's sewer lateral in any way, since it was located approximately 5' below the surface. DOT does not have any evidence to support the claimant's assertion that, prior to the construction project, his sewer lateral was connected to the old storm sewer main. DOT states that the construction project involved the installation of a new sanitary sewer main. DOT further states that, because the purpose of the claimant's sewer lateral is to dispose of "gray water", it falls under the City of West Bend's policy, which states that sewer laterals are the responsibility of the property owner and must be connected to the sanitary sewer main. DOT also alleges that there is evidence that the contractor hired by the claimant damaged the lateral during the excavation. DOT states that its records show that the project contractor did damage the claimant's sewer lateral during installation of the nearby water lateral but that the damage was repaired. DOT states that it sent a letter to all property owners in the project area requesting that they identify any private utilities that might be affected by the construction and that the claimant did not reply. However, DOT could not produce a copy of the letter and states that it would have been hand delivered to the building rather than sent to the address of the owner of the building.

The Board concludes the claim should be paid in the reduced amount of \$3,472.20 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 appropriation s. 20.395 (3)(cq), Stats.

2. Check Cashing Corporation of Racine, Wisconsin claims \$9,983.78 for damages related to the cashing of a SSI benefit check. On August 31, 2000, Frances M. Jones presented a SSI benefit check in the amount of \$9,983.78 at the claimant business. The claimant cashed the check and was informed on September 9th by its bank that the state had put a stop payment on the check, effective September 6th, and that the check would not be honored. The claimant contacted DHFS and was told by the SSI department that the check was issued for the wrong amount and that Ms. Jones was only due a much smaller benefit of approximately \$5300. SSI also stated that Ms. Jones knew that the check was an error and that she was not supposed to cash it. The claimant contacted the Racine Police Department and took steps to pursue charges against Ms. Jones, however, the DA's office felt that there was not sufficient proof of intent to commit a crime and Ms. Jones was not charged. The claimant believes that it is an innocent third party and that it should not pay for the state's error. The claimant believes that it should at least be immediately reimbursed for the amount of SSI benefits legitimately owed to Ms. Jones.

DHFS recommends denial of this claim. Based on the Department's information, Ms. Jones attempted to cash the check at another business earlier that day. That check cashing business verified the check prior to cashing it and was informed that the check was an overpayment and that a stop payment was

in place. That business declined to cash the check. Ms. Jones then apparently went to the claimant in a second attempt to have the check cashed. An informal survey of check cashing establishments in the Madison area shows that their policy is to verify the validity of checks the size of this one. Based on a conversation with the Racine Police Department, DHFS believes that Ms. Jones may have been personally acquainted with the staff at the claimant business, which perhaps resulted in a lessening of their diligence in verifying the status of this unusually large check. The amount actually due Ms. Jones was \$4,283.78. SSI benefit funds may only be paid to eligible program recipients or their representative payees, therefore, DHFS is unable to issue a check to the claimant. DHFS believes that the claimant should seek reimbursement from Ms. Jones, who fraudulently cashed a check for money to which she knew she was not rightfully entitled.

The Board concludes the claim should be paid in the reduced amount of \$2,500.00 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 Family Services appropriation s. 20.435 (7)(ed), Stats.

3. Shirley A. Anderson of Milwaukee, Wisconsin claims \$1,800.00 for vehicle damage allegedly caused by a Department of Health and Family Services employee. The claimant, who also works for DHFS, states that her vehicle was parked at her state office building in Waukesha on February 22, 2001. She had taken a state vehicle to complete her job duties and left her personal vehicle in the state vehicle assigned space. She states that when she returned with the state vehicle on February 23, she discovered that her van had been hit and damaged. There was another state vehicle in the parking space adjacent to the claimant's personal vehicle. She states that she contacted the driver of the other state vehicle and was told by that individual that they did not hit her car. The claimant states that she contacted the police. The claimant alleges that the height of the adjacent state vehicle's bumper and the damage on her vehicle was the same and that there were black marks from the state vehicle's bumper on her van. The claimant believes that a state employee hit her vehicle and that she should therefore be reimbursed for the full amount of the damages. She requests reimbursement of \$1800. Her insurance deductible is \$500.

The Department of Health and Family Services recommends denial of this claim. A State Risk Management investigation determined that the state vehicle adjacent to the claimant's car was not the cause of the damage. Risk Management believes that the damage on the claimant's van is not consistent with the size and shape of the state vehicle's bumper. The police report indicates that the driver of the adjacent state vehicle claims to have backed the state vehicle directly out of the stall into an empty stall behind her and therefore could not possibly have struck the claimant's vehicle. There was a report from a witness who stated that she had seen this driver back the car straight out of the stall into the stall behind her. The officer also indicated that "The damage to the van was most severe near the rear wheel well and decreased in severity as the scrape went forward. This indicates the striking vehicle most likely struck the van at the wheel well and went forward. It does not appear a vehicle backing out of the stall next to the van would have caused the damage. Another state vehicle was also parked next to the claimant's van that day and the driver of that vehicle indicated that she did not strike the claimant's vehicle and that her state car was undamaged. The Department does not believe there is sufficient evidence as to how the vehicle was damaged to hold DHFS responsible for the claimant's damages.

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.

4. Scott Rouse of Milwaukee, Wisconsin claims \$1,241.00 for overpayment of taxes. The claimant states that he failed to file income tax returns in 1992 and 1993 because of three hospital stays. The claimant states that he has been disabled since a stroke in 1978. He claims that his health problems prevented him from filing his 1992 and 1993 returns. The Department garnished his wages and intercepted tax refunds. The claimant filed the missing returns in January 2001. The claimant apologizes that it took so long to file the returns. He believes that he should be refunded this money since his returns show that he would not have owed any taxes for those years but would have actually received refunds. He requests return of \$750 garnished from his wages, the intercepted \$180 in refunds, and his \$311 in refunds from 1992 and 1993.

The Department of Revenue recommends denial of this claim. DOR states that this claim involves an assessment initiated by DOR based on a federal audit of the claimant's 1991 return and estimated assessments based on his failure to file returns in 1992 and 1993. DOR states that a combined assessment for all three years was issued on December 8, 1995, with a due date of 1996. DOR states that it worked diligently to locate the claimant, who moved frequently, as often as three times in eight months. DOR records show several promises by the claimant to file returns beginning in January 1998. DOR states that it intercepted the claimant's 1997 and 1998 income tax refunds, certified his wages in 1998 and again in 2000, and intercepted his 1998 sales tax rebate. DOR states that the claimant has contacted the Department more than once a month since August 1999 but failed to file the requested returns until January 12, 2001. Based on DOR's calculations of the actual liability for 1991 and the late filing fees and collection fees for 1992 and 1993, DOR over-collected \$881.43. DOR cites section 71.75(5), Stats., which prohibits it from refunding the amount collected on the original assessment since no refund was claimed within the prescribed two-year time period. In addition, DOR cites section 71.75(2), Stats., which does not allow for return of the 1992 and 1993 refunds (\$120 and \$99) because of the four-year statute of limitations.

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.

5. Craig R. Pajari of Cloquet, Minnesota claims \$3,229.94 for monies levied from his account as well as attorney's fees and mileage. The claimant states that the DOR levied his bank account in the amount of \$2,709.44 for payment of back taxes. The claimant states that he has since proved that he did not owe any taxes to the State of Wisconsin for the years in question. He requests return of the money taken from his account as well as \$300 in attorney's fees and \$220.50 for mileage (31.5 cents per mile) traveling from Cloquet, MN to Madison, WI to resolve this issue.

The Department of Revenue recommends denial of this claim. The claimant failed to timely file income tax returns for the years 1993 through 1996. An estimated assessment for 1993 was issued in November 1996, with a due date of January 6, 1997. Estimated assessments for 1994 and 1995 were issued in November 1997, with a due date of January 5, 1998. An estimated assessment for 1996 was issued on November 30, 1998, with a due date of February 1, 1999. The claimant's bank account was levied in August 2000 in the amount of \$2,709.44. In March 2001 the claimant provided documentation that his

1993 income was \$2,706 and provided a copy of his 1996 Minnesota residence return. In April 2001 the claimant filed his 1994 and 1995 returns, each with refunds claimed that could not be issued due to the four-year statute of limitations. DOR states that s. 71.75(5), Stats., prohibits it from refunding the amount that was collected on the original assessments since no refund was claimed within the prescribed two-year period and recommends denial 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.

6. Arthur W. Johnson of Whitewater, Wisconsin claims \$7,501.01 for overpayment in taxes due to failure to file income tax returns for the years 1988 through 1994. The claimant states that he and his wife purchased their first farm in 1987. He states that they were not aware of how to handle tax issues related to the farm and that they therefore put off filing returns. In 1997 the claimant states that he realized that he would need to hire an accountant to take care of the overdue taxes. The claimant states that it took the accountant almost a year to get the taxes done and that the claimant's wife suffered two strokes during that year, leaving him to run the farm alone. The claimant states that the accountant, who was supposed to complete all the missing returns, only completed returns for three years. The claimant states that he has an unresolved dispute with the accountant over this matter. The claimant believes that the DOR hounded him for the returns and then used the statute of limitations as an excuse not to return his overpayments.

The Department of Revenue recommends denial of this claim. DOR states that two separate estimated assessments were issued in February 1996, one for 1988 through 1991 and one for 1992 through 1994. The assessments were referred to collections in May 1996. DOR records indicated that the claimant began contacting DOR in June 1996 to discuss his account. DOR states that the claimant filed returns for 1994 through 1997 in October of 1998. The farmland credit allowed for these four years, \$6582.00, was applied to the delinquent estimated assessments for 1988 through 1993. The 1988 through 1993 returns were filed in November of 1999, almost four years after the original assessment. DOR states that section 71.75(5), Stats., prohibits them from refunding the amount that was collected on the original assessment since no refund was claimed within the prescribed two-year period. The claimant also refers to a motor vehicle fuel tax refund of \$939.01. DOR believes that the claimant may have thought that he could apply for a motor vehicle fuel tax refund for the State of Wisconsin on his federal income tax return. That is not the case. The State of WI requires a separate refund claim, which must be filed within one year of the date of purchase. No such claim has been filed with DOR.

The Board concludes that the claim should be paid in the reduced amount of \$289.63, for payment of motor fuel credit for the years 1996–1998 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.

7. Richard W. Hennecke of Waukesha, Wisconsin claims \$5,000.00 for damages related to his retirement from state service. The claimant states that he was informed by DETF that he was eligible to retire on June 30, 1998. The claimant states that DETF employees informed him, both verbally and in writing, that he would be eligible to continue his state life insurance at his current rates. The claimant states that he was told by DETF that he had to work in each of five calendar years to be eligible to continue benefits. He states that since he was verbally assured and confirmed in writing that his life insurance

would continue and since he was eligible to continue all other benefits, he had no reason to suspect that DETF had given him incorrect information. Furthermore, the claimant believes that he was eligible to continue his life insurance. He points to s. 40.02(25)(a), Stats., which defines eligible employee for the purposes of insurance as someone who has participated in the Wisconsin Retirement System (WRS) for at least 6 months. The claimant participated in WRS beginning on 6/27/94 and was therefore an eligible employee for purposes of insurance on 12/27/94. The claimant states that the statute does not rely on insurance "effective dates" to determine eligibility. Since he was eligible and participating in WRS in 1994, the claimant believes that he meets DETF's requirement of being covered in each of five calendar years. The claimant was offered a conversion life insurance policy by DETF after the error was discovered, however, that insurance was significantly more expensive than his state policy (\$58.83 annually per \$1000 coverage versus \$0.52 annually per \$1000 coverage) and would have cost him over \$2300 more per year. The claimant states that he is requesting \$5,000 because that is the Claims Board payment limit and is also the approximate cost of burial. The claimant believes that either DETF is incorrectly defining "eligible employee" for purposes of insurance contrary to s. 40.02(25), Stats., or they simply gave him the incorrect information. The claimant alleges that he made his decision to retire based on DETF's statements about his eligibility to continue benefits and requests payment in the amount of \$5,000.

DETF does not make any recommendation on this claim. DETF acknowledges that its employee incorrectly advised the claimant that he was eligible to continue his life insurance and that she provided this information in writing. However, DETF believes that because the claimant was previously informed that he had to be covered by state insurance for five years in order to be eligible to continue his insurance and because no premiums were ever deducted from the claimant's retirement checks, he should have been aware that an error had been made. DETF states that the claimant was not eligible to continue his life insurance benefits because his insurance was not effective until 1/1/95 and that this effective date was clearly stated on the claimant's application and in a confirmation letter sent to the claimant after his insurance application was processed. After DETF's error was discovered DETF did offer the claimant a conversion insurance policy for which he would have been eligible but he declined. Finally, the claimant has provided no documentation for the \$5000 amount he is claiming. DETF acknowledges that it gave the claimant incorrect information and that he might have given that information, provided in writing, more weight than previous information he had received. 74 Op. Atty. Gen 193, 196 (1985), provides that the Claims Board lacks the authority to order payment from the Public Employee Trust Fund. Since any payment for this claim would have to come from the Claims Board appropriation, DETF declines to make any recommendation regarding payment.

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.

8. Ronald P. Bristol of Madison, Wisconsin claims \$250.00 for lost property. The Department of Administration, Division of Facilities Development, employs the claimant as a HVAC Control Specialist. On March 28, 2001, the claimant was performing a site inspection at a Department of Health and Family Services facility in Mauston, WI. He states that he left his coat, with his sunglasses, keys and gloves in the pocket, in the upper floor mechanical room, along with the coats of the

other employees performing the inspection. He states that when they returned to the mechanical room, he found that his coat was missing. The claimant submitted a claim to his insurer and requests reimbursement of his \$250 deductible.

The Department of Administration recommends denial of this claim. DOA believes that it would set a bad precedent to pay this claim and does not believe that the state should be held liable for personal items lost by employees. DOA also states that, to the best of its recollection, these types of claims have not been granted in the past.

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 Rothschild not participating.*)

9. Amy Merrill of Madison, Wisconsin claims \$100.00 for vehicle damage allegedly related to her employment with the Department of Corrections. The claimant is a Probation and Parole Agent for the DOC. She states that on April 26, 2001, she parked her car in the office parking lot on Allied Drive. She was out of the office all morning at a meeting, to which she rode in a co-worker's vehicle. When she returned to the office at 1:45 PM, she noticed that a passenger side window on her vehicle was smashed. She informed her supervisor, contacted the Madison Police and her insurance company. The repairman told her that two rocks had been thrown through the window to cause the damage. The claimant states that the office is located in a high risk neighborhood and that there are often many unsupervised children playing in the area, including in the parking lot amidst the vehicles. The claimant states that her supervisor indicated that they had been having problems with vandalism over the last several weeks. The claimant also states that many neighborhood residents are very aware of which vehicles are driven by parole agents. She requests reimbursement for her insurance deductible. The cost to fix the window was \$258 and the claimant's deductible was \$100.

DOC recommends payment of this claim based on equitable grounds. DOC agrees with the facts as stated by the claimant. DOC believes that this claimant incurred these expenses only because she works for this agency as a Probation and Parole Agent. DOC believes that it is very likely that residents of the neighborhood knew that the owner of the vehicle was a law enforcement representative and intentionally damaged the vehicle. DOC feels that it cannot allow Probation and Parole Agents and their families to bear the financial burden of expenses they incur solely and directly because they work with criminals for the benefit of the people of Wisconsin. This would be unfair and would undermine agent morale. DOC supports payment of the claim and is willing to pay the amount requested by the claimant.

The Board concludes the claim should be paid in the 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 Corrections appropriation s. 20.410 (1)(a), Stats.

10. Randall & Cindy Jaskot of Dousman, Wisconsin claim \$303.49 for refund of tax assessment. The claimants state that on November 17, 1995, the company that he worked for transferred Randall Jaskot to Wisconsin from Illinois. The claimants state that they were told that the company would continue to pay Illinois taxes and that they did not need to worry about Wisconsin taxes. The claimants state that they believed what they were told because this was a \$100M company that had transferred people all the time. The claimants now regret that they relied on the company's assurances. They state that there was no malicious attempt on their part to avoid paying

their taxes and therefore request return of the \$303.49 assessment.

The Department of Revenue recommends denial of this claim. DOR records indicate that an estimated assessment was issued in September 2000 for failure to file a timely WI income tax return for 1995. The assessment was referred to collections in December 2000. The return was filed on April 26, 2001. The taxpayers were assessed the collection fee, late filing fee, and interest as imposed by state statute. The 25% negligence fee was not imposed after consideration was given for the claimants' circumstances.

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. PACE Local 7-0765 of New Berlin, Wisconsin claims \$5,326.51 for refund of overpayment of taxes. The claimant states that two successive Financial Secretaries for its organization failed to file tax returns for withheld payroll taxes and make the appropriate payments to the Department of Revenue. This problem occurred between mid 1995 and October 1999. DOR has refunded \$5,391.38 in overpayments, plus \$341.70 in penalties. The claimant requests reimbursement of the remaining overpayments, totaling \$5,326.51, which DOR has refused to issue due to the two-year statute of limitations under s. 71.75(5), Stats. The claimant does not believe that the legislature intended that DOR use that section to deny refunds to ignorant taxpayers based on over-collection of taxes.

DOR recommends denial of this claim, which involves estimated assessments based on failure to file employee withholding tax reports from 1995 through 1999, specifically, the third and fourth quarters of 1995 and the first and second quarters of 1996. Estimated assessments for these four quarters were filed in January, April, June and September 1996, respectively. Tax reports for all four assessments were filed on October 22, 1998. DOR states that s. 71.75(5), Stats., prohibits it from refunding the amount that was collected on the original assessments since no refund was claimed within the prescribed two-year period.

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. Kenneth C. Ketterer of Indialantic, Florida claims \$7,487.20 for overpayment of taxes related to the sale of a Wisconsin condominium in 1983. The DOR issued an estimated assessment based on an adjustment to his 1983 tax return. The claimant issued assessments for both the claimant and his wife, however, no monies were ever collected on his wife's assessment. The claimant states that he and his wife moved to Florida in 1983 and that they have lived at their current address in Indialantic, FL for many years. He states that in March 1994 they were informed by their mutual fund that DOR had levied \$7,487.20 from their account for payment of back taxes. The claimant alleges that this was the first they were ever informed that there was a problem with their WI taxes and that they never received any notices from DOR. The claimant does not believe that DOR made a reasonable attempt to locate them and points to the fact that they had lived at their current address for many years and that the mutual fund had their correct address. The claimant alleges that they wrote DOR three times in 1994 to find out why the money was taken but never received any reply. The claimant states that they were then contacted by a collection agency in May 2000 regarding the assessment issued against his wife. The claimant states that

they immediately responded and sent DOR the required documentation to show that they did not owe the taxes assessed. He alleges that they tried to clear up the issue with DOR but that it took numerous phone calls and a certified letter before DOR finally responded four months later. The claimant points to the fact that they responded promptly to the May 2000 contact, resolving the issue to DOR's satisfaction within 16 days. The claimant believes that DOR has been extremely unresponsive and did not make a reasonable effort to locate his current address. The claimant states that, had they received the earlier notices, they would have responded to them promptly and request reimbursement of the amount levied from their account.

DOR recommends denial of this claim. DOR records indicate that the claimant filed a 1983 part-year Wisconsin resident tax return showing an address in Miami, Florida in March of 1984. In September 1986 DOR sent a letter to the claimant at that Miami address regarding the 1983 sale of their WI property. DOR received no reply. In December 1986 DOR issued an assessment, which was referred for collection in 1987. DOR states that over the course of the next seven years, various notices and letters were sent to the claimant at the Miami address and there is no record in DOR files that the claimant ever responded. On March 23, 1994, DOR received funds from the claimant's mutual fund to satisfy the debt. DOR states that it has no record of any correspondence from the claimant until his wife's assessment became an issue in 2000. DOR further states that this claim is for the entire amount levied from the claimant's account. Based on the information provided by the claimant, DOR calculates his revised liability to be \$3,095.18 and his wife's to be \$170.10, therefore, DOR believes the correct amount of overpayment is only \$4,221.92, not \$7,487.20 as the claimant is requesting.

The Board concludes the claim should be paid in the reduced amount of \$4,221.92 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Revenue appropriation s. 20.566 (1)(a), Stats.

The Board concludes:

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

- Anderson, Shirley A.
- Bristol, Ronald P.
- Hennecke, Richard W.
- Jaskot, Randall and Cindy
- PACE Local 7-0765
- Pajari, Craig R.
- Rouse, Scott

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

Check Cashing Corp.	\$2,500.00
Johnson, Arthur W.	\$289.63
Ketterer, Kenneth C.	\$4,221.92
Merrill, Amy	\$100.00
Schmidt, Jerome E.	\$3,472.20

Dated at Madison, Wisconsin this 10th day of October 2001.

Alan Lee, Chair
 Representative of the Attorney General
 John E. Rothschild, Secretary
 Representative of the Secretary of Administration
 Sheryl Albers
 Assembly Finance Committee
 Chad Taylor
 Representative of the Governor

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

Senate Clearinghouse Rule 01-072

Relating to regulations concerning agent transactions with customers.

Submitted by Office of the Commissioner of Insurance.

Report received from Agency, October 17, 2001.

Referred to committee on **Insurance, Tourism, and Transportation**, October 18, 2001.

Senate Clearinghouse Rule 01-088

Relating to Wisconsin lottery retailers and nonprofit organization retailers, and the Wisconsin lottery's major procurements.

Submitted by Department of Revenue.

Report received from Agency, October 16, 2001.

Referred to committee on **Universities, Housing, and Government Operations**, October 18, 2001.

MESSAGES FROM THE ASSEMBLY

By John A. Scocos, chief clerk.

Mr. President:

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

Assembly Bill 142

Assembly Bill 242

Assembly Bill 251

Assembly Bill 492

Assembly Bill 505

Assembly Bill 519

Assembly Bill 553

Assembly Bill 556

Assembly Bill 557

Adopted and asks concurrence in:

Assembly Joint Resolution 57

Concurred in:

Senate Bill 279

Senate Joint Resolution 45

**MESSAGES FROM THE ASSEMBLY
 CONSIDERED**

Assembly Bill 142

Relating to: following snowplows and providing a penalty.

By Representatives Ainsworth, Boyle, Freese, Huber, Krawczyk, Ladwig, Lassa, M. Lehman, J. Lehman, Lippert, Musser, Olsen, Owens, Plouff, Powers, Ryba, Starzyk, Stone, Townsend, Turner, Vrakas and Wade; cosponsored by Senators Plache, Breske, Burke, Darling, Moen and Schultz.

Read first time and referred to committee on **Insurance, Tourism, and Transportation**.

Assembly Bill 242

Relating to: the disclosure of information obtained by the department of transportation from applications for drivers' licenses, permits, or identification cards to the selective service system for the purposes of registration with the selective service system.

By Representatives Wasserman, Leibham, Schneider, Berceau, Boyle, Gundrum, Musser and Turner; cosponsored by Senators Burke and Darling.

Read first time and referred to committee on **Health, Utilities, Veterans and Military Affairs**.

Assembly Bill 251

Relating to: the period of time during which sturgeon spearing licenses may not be issued.

By Representatives Kaufert, Ott, Wade, Meyerhofer, Petrowski, Vrakas, Gunderson, Owens and Ward; cosponsored by Senators Burke, Roessler, Ellis and Shibilski.

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

Assembly Bill 492

Relating to: use of educational telecommunications access program grants.

By Representatives Underheim, McCormick, Wieckert, Jensen, Staskunas, Ainsworth, Duff, Sykora, Starzyk, Lippert, Krawczyk, M. Lehman, Petrowski, Ladwig, Miller, Ott, Vrakas and Jeskewitz; cosponsored by Senators Roessler and Huelsman.

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

Assembly Bill 505

Relating to: various changes to the worker's compensation law.

By Representatives Hundertmark and Turner; cosponsored by Senators Hansen and A. Lasee.

Read first time and referred to committee on **Labor and Agriculture**.

Assembly Bill 519

Relating to: designating the bridge on I 43 across the Fox River in the city of Green Bay as the Leo Frigo Memorial Bridge.

By Representatives Montgomery, Krawczyk and Ryba; cosponsored by Senators Hansen and Cowles.

Read first time and referred to committee on **Insurance, Tourism, and Transportation**.

Assembly Bill 553

Relating to: various changes in the unemployment insurance law, appointment of temporary reserve appeal tribunals, requiring the exercise of rule-making authority, and making an appropriation.

By Representatives Hundertmark and Turner; cosponsored by Senators Hansen and A. Lasee.

Read first time and referred to committee on **Labor and Agriculture**.

Assembly Bill 556

Relating to: special labor-related reports, public educational institution job training access policies, and occupational driver's license fees.

By committee on Labor and Workforce Development.

Read first time and referred to committee on **Labor and Agriculture**.

Assembly Bill 557

Relating to: productivity enhancement training and development zone tax credits; a workplace diversity grant program, a job retention skills development program, preapprenticeship basic skills training, and an apprenticeship marketing program; providing an exemption from emergency rule procedures; granting rule-making authority; and making appropriations.

By committee on Labor and Workforce Development.

Read first time and referred to committee on **Labor and Agriculture**.

Assembly Joint Resolution 57

Relating to: memorializing Congress to study and modify the social security earnings limit.

By Joint Legislative Council.

Read and referred to committee on **Universities, Housing, and Government Operations**.

ADJOURNMENT

Senator Risser, with unanimous consent, asked that the Senate adjourn until Tuesday, October 23 at 10:00 A.M..

Adjourned.

10:01 A.M.

SENATE ENROLLED PROPOSALS

The Chief Clerk records:

Senate Joint Resolution 45

Report correctly enrolled on October 18, 2001.

**LEGISLATIVE REFERENCE BUREAU
CORRECTIONS**

CORRECTIONS IN:

2001 SENATE BILL 211

Prepared by the Legislative Reference Bureau
(October 17, 2001)

1. Page 4, line 10: delete "discriminated" and substitute "discriminate".