

JOURNAL OF THE SENATE

MONDAY, June 12, 1972.

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

EXECUTIVE COMMUNICATIONS

To the Honorable, the Senate:

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

Senate Bill	Chapter No.	Date Approved
874 -----	331 -----	June 9, 1972

Respectfully submitted,

PATRICK J. LUCEY,
Governor.

June 9, 1972.

To the Honorable, the Senate:

I am returning **Senate Bill 232** without my approval.

This bill amends the existing statutes relating to the powers of the Joint Committee for Review of Administrative Rules. The bill seeks to enhance the powers of the joint committee by allowing the committee to define a directive or any order of any agency as a rule and to, thereby, permit joint committee suspension of agency directives and orders.

While the purpose of the bill has some merit, and it is without question a prerogative of the legislature to confer on the committee powers and duties appropriate to conduct of the legislature's responsibilities for lawmaking, the bill does not sufficiently serve to implement that purpose.

The defect in **Senate Bill 232** is that it gives to the Joint Committee for Review of Administrative Rules the power to define which agency directives are, in fact, rules, despite the specific statutory definition of "rules" in the statutes. A potential conflict of interpretation could arise if this bill received my approval.

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I agree that there is a real need to enact legislation that more properly utilizes the Joint Committee for Review of Administrative Rules and will cooperate in a joint effort to prepare a proposal for the next legislative session that adequately meets the need in this area.

I am asking the Legislative Council to create an interim committee made up of legislators and state agency personnel to draft remedial legislation for the 1973 session.

For the above reasons, I do not believe that it would be in the public interest to sign Senate Bill 232 into law at this time.

Respectfully submitted,

PATRICK J. LUCEY,
Governor.

June 9, 1972.

To the Honorable, the Senate:

I am returning Senate Bill 296 without my approval. The bill would establish a Youthful Offenders Act in Wisconsin and would facilitate the opening of the Youthful Offenders Institution in Adams County. Although the bill once seemed a potentially good piece of legislation, new information, changes in the client population to be served by the new law, and amendments adopted to the original bill, all lead me to the conclusion that this bill should be vetoed. I have taken this action for several reasons.

First, the bill will not permit the transfer of a part of the existing adult prison population to the new institution when it is opened. I believe it is necessary to insure that there will be a direct trade-off between the new institution and the existing prison system. With the bill as it now reads, these direct trade-offs are not possible, and the opening of the new institution could lead directly to an increase in the number of inmates in Wisconsin institutions.

Secondly, Wisconsin has recently been experiencing the same decline in institutional populations that has affected the country as a whole. Since May 1, 1971, adult male populations have dropped by 17.5%, and further declines are

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anticipated. During the same period, use of probation as a sentencing alternative has increased by 21%. Alternatives to institutions are being successfully utilized both in Wisconsin and other states. To sign a bill which could increase institutional capacity by over 20% at a time when populations are declining and when emphasis is on programs outside of institutions would not be sound public policy.

It is clear at this time that the state's correctional policies should be scrutinized carefully in light of the experience of other states, such as Massachusetts, Washington and California, and in light of new concepts regarding the use of incarceration. To limit the options available to us by expanding the present corrections system without fully evaluating other alternatives would not be in the best interests of the state. We must re-evaluate our whole correctional system in Wisconsin before increasing the present system with another large state institution. This bill, to be operative, could require the opening of the Adams County Youthful Offenders Institution. I believe further study is required before that decision is made.

I am requesting that the Department of Health and Social Services and the Task Force on Offender Rehabilitation study the use of the new institution nearing completion in Adams County. If the institution is not to be opened as a correctional facility, other possible alternatives must be considered. This matter must be reviewed carefully, and I fully intend to include a recommendation in the 1973-75 budget which can be acted upon by the legislature.

Regardless of the relationship of the Youthful Offenders Act to the issue of when to open the Adams County facility for corrections purposes, I believe the provision of Senate Bill 296 which authorizes administrative transfers of juveniles, who could not have been sentenced at the time of conviction to a youthful offender institution, to a youthful offenders institution would not withstand constitutional attacks.

For the above reasons, I do not feel it would be in the public interest to sign Senate Bill 296 at this time. I do think that several aspects of this bill, such as the lack of criminal record implications for a conviction, and limited probation

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and sentencing terms, are outstanding innovations which ought to be pursued in other legislation.

Respectfully submitted,

PATRICK J. LUCEY,
Governor.

June 9, 1972.

To the Honorable, the Senate:

I am returning Senate Bill 348 without my signature. This bill would provide for transfers of juvenile delinquents to adult correctional institutions. The provisions of Senate Bill 348 are undesirable for a number of reasons:

First, it allows the Division of Corrections to impose a sentence on a juvenile which could not be imposed by the juvenile court judge at time of sentencing. There are ample precedents to indicate that this could not withstand Federal Constitutional attack. It is hard to justify the transfer of juveniles to an adult prison without a trial which guarantees to the juvenile his full rights.

Secondly, the need for such transfers has diminished. The populations of our juvenile institutions have dropped substantially in the past year. This alleviates some of the problems of supervision and control which caused juveniles to be transferred.

For the above reasons, I do not believe that it would be in the public interest to sign Senate Bill 348 into law at this time.

Respectfully submitted,

PATRICK J. LUCEY,
Governor.

June 9, 1972.

To the Honorable, the Senate:

I am returning Senate Bill 442 without my approval.

This bill establishes requirements to be observed by the state and other public bodies for making payments on con-

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struction contracts and specifies the amounts to be retained thereon by the municipality.

Public construction in the state comprises a very significant percentage of the volume of one of our larger industries. Reasonable statutory requirements regulating payments and retained amounts on construction contracts could well serve in the public interest. To this end I am in agreement with the basic purpose of this proposal.

However, in establishing a statutory procedure, it is imperative that its provisions are such that will insure that the public interest is protected as well as the interests of the private contractors. The requirements established by this bill fail to meet these criteria and would result in many serious problems and additional costs to the public.

Newly defined in this bill is "partial use" as "any occupancy or use of the facility by the municipality." Such partial use requires a proportionate reduction in retained amounts. Since it is not at all unusual for a municipality to have to make some use of a facility before actual completion, this requirement would deprive them of the means of providing an incentive to the contractors to complete the work.

The bill language is open to confusing and sometimes apparently contradictory interpretations. Quite likely, extensive litigation would have to be endured before the actual effect of the language would become operative.

(1) A retainage "equal to 10% of said estimate on the first \$100,000 of work completed and 5% of said estimates on work completed thereafter, but after 50% of the work has been completed, partial payments in full for the work subsequently completed shall be made to the contractor if the architect or engineer certifies that the job is proceeding satisfactorily." However, "In no event may the retainage be reduced to an amount less than 5% of the total contract price, except as provided in par. (d)."

(2) The municipality is required to release all retained amounts to the contractor "immediately upon acceptance of the work." The terms "immediately" and "acceptance" are without definition and undoubtedly will require interpretation by the courts.

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(3) The establishment of retained amounts as "a trust fund" can have unintended statutory ramifications.

Based primarily on the foregoing reasons, I feel compelled to return this bill for additional consideration.

I am, however, in agreement with the goal of establishing regulations to govern the payments and retained amounts on public construction contracts. To accomplish that end, I have requested the several concerned parties to cooperate on language which will serve the best interests of the public as well as that of the construction industry and that can be incorporated in a bill to be introduced. These parties have already been meeting and will have an agreed-upon proposal for legislative consideration.

For the above reasons, I do not believe that it would be in the public interest to sign Senate Bill 442 into law at this time.

Respectfully submitted,

PATRICK J. LUCEY,
Governor.