

JOURNAL OF THE ASSEMBLY [July 13, 1977]

STATE OF WISCONSIN

Assembly Journal

Eighty-Third Regular Session

WEDNESDAY, July 13, 1977.

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

INTRODUCTION AND REFERENCE OF BILLS

Read first time and referred:

Assembly Bill 880

Relating to establishing a hazardous waste management program under the department of natural resources, establishing a waste management fund, granting rule-making authority, making an appropriation and providing a penalty.

By Legislative Council.

To committee on Environmental Protection.

Assembly Bill 881

Relating to prohibiting the sale of cleaning agents and water conditioners with specific phosphorus concentrations and providing a penalty.

By Representatives Munts, Kedrowski, Flintrop, Day, Otte, Dandeneau, Coggs, Loftus, Metz and Lorman, co-sponsored by Senators Radosevich, Thompson, Harnisch and Braun.

To committee on Environmental Protection.

Assembly Bill 882

Relating to income tax credits for energy conservation measures and granting rule-making authority.

By Representatives Merkt, Schmidt, Conradt, Byers, Lewison, Roth, Matty, Schricker, Klicka, Bradley, Ausman, Luckhardt, Lewis, Johnston, Travis, Olson, Gunderson, Snyder, McEssy, Ellis, Opitz, Porter and Gower.

To committee on Environmental Protection.

Assembly Bill 883

Relating to campaign financing, granting rule-making authority, providing penalties and making appropriations.

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By Representative Kedrowski, by request of Elections Board.
To committee on Elections.

Assembly Bill 884

Relating to requirements for election officials, ballots, nominations, canvassing, recounts, administration of elections, prohibited election practices, granting rule-making authority, providing penalties and making an appropriation.

By Representative Kedrowski, by request of Elections Board.
To committee on Elections.

Assembly Bill 885

Relating to registration and qualification of electors and absentee voting procedure and making an appropriation.

By Representative Kedrowski, by request of Elections Board.
To committee on Elections.

PETITIONS

Assembly Petition 128

Submitted by Mae Lauscher, Neilsville, consisting of 25 signatures of citizens of Wisconsin in support of an act relating to the freedom of choice in medical treatment in Wisconsin.

By Representative Lewis.
To committee on Health and Social Services.

Assembly Petition 129

A resolution submitted by the Forest County Board in support of Senate Bill 186, relating to providing information to county boards regarding equalized valuation.

By Representative Kincaid.
To committee on Local Affairs.

Assembly Petition 130

A resolution submitted by the Forest County Board in support of a mineral taxation distribution formula which is favorable to counties and which contains no minimum amount or maximum amount of return.

By Representative Kincaid.
To committee on Revenue.

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Assembly Petition 131

A resolution submitted by the Oneida County Board in opposition to any mine tax legislation written without county retention of a favorable amount of mineral tax revenue.

By Representative Kincaid.

To committee on Revenue.

Assembly Petition 132

A resolution submitted by the Jefferson County Board in support of Assembly Bill 781, relating to ineligibility of unwed fathers for aid to families with dependent children.

By Representative Lorman.

To committee on Health and Social Services.

Assembly Petition 133

A resolution submitted by the Jefferson County Board in opposition to Assembly Bill 780, relating to access to public records and creating an open records board.

By Representative Lorman.

To committee on Internal Management.

Assembly Petition 134

A resolution submitted by the Jefferson County Board in opposition to Assembly Bill 762, relating to authorizing a one percent county sales tax.

By Representative Lorman.

To committee on Revenue.

Assembly Petition 135

A resolution submitted by the Jefferson County Board in opposition to Assembly Bill 760, relating to establishment of a county assessor system by a majority vote of the county board.

By Representative Lorman.

To committee on Revenue.

Assembly Petition 136

A resolution submitted by the Jefferson County Board in opposition to Assembly Bill 421, relating to determining compliance with state solid waste disposal standards.

By Representative Lorman.

To committee on Environmental Protection.

Assembly Petition 137

A resolution submitted by the Jefferson County Board in support of Senate Bill 373, relating to increasing penalties for crimes against public officials, peace officers and fire fighters and restricting the application for probation, paroles and pardons.

By Representative Lorman.

To committee on Criminal Justice and Public Safety.

Assembly Petition 138

A resolution submitted by the Whitewater Common Council in opposition to Assembly Bill 395, relating to eliminating citizenship as a requirement for county deputy sheriffs and police officers.

By Representative Lorman.

To committee on State Affairs.

Assembly Petition 139

A resolution submitted by the Brown County Board in support of legislation eliminating the sales tax on fuel and electricity.

By Representative Gower.

To committee on Revenue.

Assembly Petition 140

A resolution submitted by the Brown County Board in support of spring referenda questions pertaining to judicial reform.

By Representative Gower.

To committee on Judiciary.

Assembly Petition 141

A resolution submitted by the Brown County Board in support of Senate Bill 74, relating to substitution of judges.

By Representative Gower.

To committee on Judiciary.

Assembly Petition 142

A resolution submitted by the Brown County Board in opposition to Senate Bill 2, relating to reconstruction of certain private shoreland facilities.

By Representative Gower.

To committee on Natural Resources.

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Assembly Petition 143

A resolution submitted by the Brown County Board in support of Senate Bill 72, relating to the powers and duties of court commissioners.

By Representative Gower.

To committee on Judiciary.

Assembly Petition 144

Submitted by Donald Zahn, LaCrosse, consisting of 175 signatures of veterans of Wisconsin in support of Assembly Bill 675, relating to granting creditable service for military service to public employes with less than 20 years creditable service for retirement purposes.

By Representative Medinger.

To Joint Survey Committee on Retirement Systems.

Assembly Petition 145

Submitted by Janet Swanson, consisting of 25,852 signatures of citizens of Wisconsin in opposition to Assembly Bill 784, relating to a general revision of occupational licensing statutes.

By Representative Snyder.

To Joint Committee for Review of Administrative Rules.

Assembly Petition 146

Submitted by John A. Anderson, consisting of 1002 signatures of citizens of Wisconsin in support of certain free hunting licenses and free admittance to state parks for citizens over sixty-five years of age.

By Representative Barry.

To committee on Tourism and Economic Development.

Assembly Petition 147

Submitted by Erwin Vorpapel, consisting of 214 signatures of firefighters of the 43rd and 44th Assembly Districts in opposition to the volunteer merit award bill, Assembly Bill 339.

By Representative DeLong.

To Joint Survey Committee on Retirement Systems.

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OPINION OF THE ATTORNEY GENERAL

OAG 56-77

July 11, 1977

**The Honorable Ed Jackamonis, Chairman
Assembly Committee on Organization
211 West, State Capitol
Madison, Wisconsin 53702**

Dear Representative Jackamonis:

Pursuant to a motion made and adopted by the Assembly Committee on Organization, I have been asked to comment on the following issue:

“The Assembly Chief Clerk has been requested to disclose the identity and numbers of telephone credit cards issued to Legislators. Further, the Chief Clerk has been requested to allow inspection of records of long-distance calls by telephone users, which are furnished to the Chief Clerk as part of the billing process for telephone services. These records disclose, among other things, the telephone number and location of persons called; thus, disclosure may invade the privacy of those persons called.

“The Committee desires an Opinion (a) discussing the rights of all parties involved in or affected by the disclosure of the requested information; and (b) limitations on, and legality of, disclosure of these records.”

Section 19.21, Stats., concerning the custody and delivery of official property and records, provides in part:

“(1) Each and every officer of the state ... is the legal custodian of and shall safely keep and preserve all property and things received from his predecessor or other persons and required by law to be filed, deposited, or kept in his office, or which are in the lawful possession or control of himself or his deputies, or to the possession or control of which he or they may be lawfully entitled, as such officers.

“(2) Except as expressly provided otherwise, any person may with proper care, during office hours and subject to such orders or regulations as the custodian thereof prescribes, examine or copy any of the property or things mentioned in sub. (1). Any person may, at his own expense and under such reasonable regulations as the custodian prescribes, copy or duplicate any materials,

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including but not limited to blueprints, slides, photographs and drawings. ...”

Although none of the cases or opinions of the Attorney General interpreting this section of the statutes have concerned the duties of legislative, as opposed to executive or judicial, officials, at common law public records were considered to include legislative and judicial as well as executive records. 66 Am. Jur. 2d, *Records and Recording Laws* sec. 2. The Assembly Chief Clerk is an officer of the Legislature. Wisconsin Constitution art. XIII, sec. 6, provides:

“The elective officers of the legislature, other than the presiding officers, shall be a chief clerk and a sergeant at arms, to be elected by each house.”

The duties of the chief clerks of the Legislature are set forth in secs. 13.15 to 13.17, Stats. The keeping of the telephone records is not specifically included within those duties; however sec. 13.15(1), Stats., provides in part that the chief clerk “shall perform all such duties as by custom appertain to his office and all duties imposed by law or by the rules.” I understand from your letter that, whether by custom or by rule, the duty of maintaining the telephone records of legislators appertains to the office of chief clerk. That being the case, those records are “in [his] lawful possession or control.” Sec. 19.21(1), Stats.

Since the Assembly Chief Clerk is an “officer” of the Legislature, in my opinion he is also an “officer of the state” within the meaning of sec. 19.21, Stats., and consequently records lawfully within his control may be examined by the public in the manner provided in sec. 19.21(2), Stats.

The right of the public to examine and copy records maintained by an officer of the state is not absolute, however. See *State ex rel. Youmans v. Owens*, 28 Wis.2d 672, 137 N.W.2d 470 (1965); *Beckon v. Emery*, 36 Wis.2d 510, 153 N.W.2d 501 (1967); and 63 Op. Att’y Gen. 400 (1974), which contains a detailed discussion of the public right to full access to all public records and the qualifications on that right. There are only three such qualifications. Two of them, i.e., reasonable regulations as to hours, procedure, etc., and express statutory limitations, do not concern us here. The third is stated as follows in 63 Op. Att’y Gen. 400 at page 406:

“The custodian may and has a duty to deny inspection where he determines that permitting inspection would result in harm to the public interest which outweighs any benefit that would result from granting inspection. ...”

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For example, and with no attempt to be exhaustive, it may in some circumstances be justifiable to withhold information obtained under a pledge of confidentiality, minutes of a grand jury investigation, or evidence relevant to a criminal prosecution.

On the other hand, as far as I am aware, an assertion of a right to privacy on the part of persons with whom the officeholder deals or to whom the records refer has never been successfully asserted as a reason to justify denial of access to those records, except in a case where some other basis for denial also exists, such as the danger of "undue" damage to a person's reputation. Correspondence directed to an officer of the state in his official capacity is subject to no general privilege against disclosure, even though the identity of the correspondents will of necessity be revealed when the correspondence is made public. See 63 Op. Att'y Gen. 400, *supra*. In my opinion, records of calls by telephone users are of a similar nature, and no general privilege against disclosure attaches to them.

Furthermore, public policy favors the right of inspection. As stated in *Beckon v. Emery, supra*, at page 516:

"... It is only in the unusual or exceptional case, where the harm to the public interest that would be done by divulging matters of record would be more damaging than the harm that is done to public policy by maintaining secrecy, that the inspection should be denied. ..."

Since, as stated above, there may exist special circumstances which will justify maintaining the secrecy of records that otherwise would be available to the public, I cannot state categorically that all of the telephone records within the control of the Assembly Chief Clerk must be made available to the public. It is the duty of the custodian of records to determine in the first instance whether circumstances exist which justify nondisclosure in a particular case, that is, weigh whether the harm done to the public interest by disclosure outweighs the right of a member of the public to have access to particular public records or documents. *State ex rel. Youmans, supra*, at page 681.

Sincerely yours,
BRONSON La FOLLETTE
Attorney General

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CAPTION:

Records kept by the Assembly Chief Clerk of telephone credit card numbers and of long-distance telephone calls of representatives are subject to the public records law. Custodian may make a determination whether to disclose or divulge records in specific instances.

COMMUNICATIONS

July 7, 1977

Mr. Everett E. Bolle
Director of Legislative Services
Wisconsin State Assembly
Room 220 West, State Capitol
Madison, Wisconsin 53702

Dear Mr. Bolle:

1977 Assembly Resolution 22 requests my opinion "as to the constitutionality of the proposed amendment to section 79.10 (2) of the statutes by 1977 Senate Bill 77 which would reduce the amount of general property tax credit received by a municipality by the ratio which the municipality's per capita Wisconsin adjusted gross income is to the statewide per capita Wisconsin adjusted gross income minus 1.2."

My office received your transmittal of Assembly Resolution 22 on June 22, 1977. 1977 Senate Bill 77 became law as chapter 29, Laws of 1977 when it was published on June 29, 1977. However, the particular amendment questioned by Assembly Resolution 22 was vetoed by the Governor.

On June 30, the Legislature began consideration of the Governor's vetoes. I am advised that the Legislature failed to override the veto of the change to section 79.10 (2), Statutes. The question presented in 1977 Assembly Resolution 22 is therefore moot.

It has been a long-standing policy of the office of Attorney General for obvious policy reasons not to address moot issues. Consequently, I am unable to respond to the Assembly's request for an opinion on this matter. I hope you understand my situation.

Sincerely yours,
BRONSON La FOLLETTE
Attorney General

From: State of North Carolina
General Assembly

Resolution 97

A joint resolution requesting congress to propose an amendment to the federal constitution to require that the total of all federal appropriations not exceed the total of all estimated federal revenues in any fiscal year, with certain exceptions.

Whereas, with each passing year this nation becomes more deeply in debt as its expenditures grossly and repeatedly exceed available revenues so that the public debt now amounts to hundreds of billions of dollars; and

Whereas, attempts to limit spending, including impoundment of funds by the President of the United States, have resulted in strenuous assertions that the responsibility for appropriations is the constitutional duty of the Congress; and

Whereas, the annual federal budget repeatedly demonstrates the unwillingness or inability of both the legislative and executive branches of the federal government to curtail spending to conform to available revenues; and

Whereas, the unified budget does not reflect actual spending because of the exclusion of special outlays which are not included in the budget nor subject to the legal public debt limit; and

Whereas, the "U.S. News and World Report" reported on February 25, 1974, that of these nonbudgetary outlays in the amount of fifteen billion six hundred million dollars (\$15,600,000,000), the sum of twelve billion nine hundred million dollars (\$12,900,000,000) represents funding of essentially private agencies which provide special services to the federal government; and

Whereas, knowledgeable planning and fiscal prudence require that the budget reflect all federal spending and that the budget be in balance; and

Whereas, believing that fiscal irresponsibility at the federal level, with the inflation which results from this policy, is the greatest threat which faces our nation, we firmly believe that constitutional restraint is necessary to bring the fiscal disciplines needed to reverse this trend; and

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Whereas, under Article V of the Constitution of the United States, amendments to the Federal Constitution may be proposed by the Congress whenever two-thirds of both Houses deem it necessary;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. That procedures be instituted in the Congress to add a new Article XXVII to the Constitution of the United States, and that Congress prepare and submit to the several states an amendment to the Constitution of the United States, requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of the estimated federal revenues, excluding any revenues derived from borrowing, for that fiscal year.

Section 2. That the proposed new Article XXVII (or whatever numeral may then be appropriate) read substantially as follows:

“The total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of the estimated federal revenues for that fiscal year, excluding any revenues derived from borrowing; and this prohibition extends to all federal appropriations and all estimated federal revenues, excluding any revenues derived from borrowing. The President in submitting budgetary requests and the Congress in enacting appropriation bills shall comply with this Article. If the President proclaims a national emergency, suspending the requirement that the total of all federal appropriations not exceed the total estimated federal revenues for a fiscal year, excluding any revenues derived from borrowing, and two-thirds of all members elected to each House of the Congress concur by Joint Resolution, the total of all federal appropriations may exceed the total estimated federal revenues for that fiscal year.”

Section 3. That copies of this resolution be transmitted to the President of the United States, the chairmen of the Judiciary Committees of both the Senate and House of Representatives, the chairman of the Joint Committee on Budget Control of the Congress and to each member of the North Carolina Congressional Delegation.

Section 4. That copies of this joint resolution be transmitted to the Secretary of State and to the presiding officers of both houses of the legislature of each of the other states in the union, with the request that it be circulated among leaders in the executive and legislative branches of the several state governments; and with the

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further request that each of the other states in the union join in requiring the Congress of the United States to initiate a proposal to amend the Constitution of the United States in substantially the form proposed in this joint resolution.

Section 5. This resolution shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 1st day of July, 1977.

SPEAKER'S APPOINTMENTS

July 13, 1977

As of this date I hereby appoint Representative Lloyd Kincaid as Vice Chairman of the committee on Revision to replace Representative Mordecai Lee who resigned.

ED JACKAMONIS
Speaker

EXECUTIVE COMMUNICATIONS

State of Wisconsin
Office of the Governor
Madison

To the Honorable, the Assembly:

The following bills, originating in the assembly, have been approved, signed and deposited in the office of the Secretary of State:

Assembly Bill	Chapter No.	Date Approved
71 -----	38 -----	July 12, 1977
202 -----	39 -----	July 12, 1977
254 -----	40 -----	July 12, 1977
292 -----	41 -----	July 12, 1977
452 -----	42 -----	July 12, 1977
459 -----	43 -----	July 12, 1977
197 -----	46 -----	July 12, 1977

Respectfully submitted,
MARTIN J. SCHREIBER
Acting Governor

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LEGISLATIVE REFERENCE BUREAU CORRECTIONS

Assembly Bill 656

On page 67, line 12, substitute "recipient" for "recepient".