STATE OF WISCONSIN

Assembly Journal

Eighty-Third Regular Session

WEDNESDAY, October 26, 1977.

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

AMENDMENTS OFFERED

Assembly substitute amendment 1 to **Assembly Joint Resolution 68** offered by Representative Bear.

Assembly substitute amendment 1 to **Assembly Bill 990** offered by Representative McClain.

INTRODUCTION AND REFERENCE OF BILLS

Read first time and referred:

Assembly Bill 1038

Relating to abolishing the council on weather modification, prohibiting all weather modification operations and providing a penalty.

By Representative Medinger.

To committee on Agriculture.

Assembly Bill 1039

Relating to expanding the membership of county boards of health and county health commissions to include registered nurses experienced in county health functions.

By Representatives Metz and Vanderperren, co-sponsored by Senator Van Sistine.

To committee on Health and Social Services.

Assembly Bill 1040

Relating to permitting minors to enter liquor stores.

By Representative Plewa, co-sponsored by Senator Frank, by request of the City of Milwaukee.

To committee on Excise and Fees.

Assembly Bill 1041

Relating to compulsory motor vehicle insurance, granting rule-making authority and providing a penalty.

By Representative Roth.

To committee on Insurance and Banking.

Assembly Bill 1042

Relating to discharge from employment for garnishment.

By Representatives Luckhardt, Thompson, Shabaz, Tregoning and Klicka, co-sponsored by Senators Sensenbrenner and McCallum, by request of Don Scholtes.

To committee on Commerce and Consumer Affairs.

Assembly Bill 1043

Relating to investment of certain funds by a clerk of court.

By Representative Clarenbach.

To committee on Judiciary.

Assembly Bill 1044

Relating to regulating water withdrawal for purposes of metallic mineral mining.

By Representatives Munts, Hasenohrl, Dueholm, Lato, Kincaid, Wahner, Kedrowski, Ferrall, Moody, Fischer, Metz, Schneider, Loftus, Day, Lorman, Jackamonis, Dandeneau, Bear, Gerlach and Flintrop, co-sponsored by Senators Radosevich, Braun, Dorman, Cullen, Berger, Risser, Bablitch, Krueger and Bidwell, by request of Special Study Committee on Mineral Taxation and Senate Select Committee on Mining Development.

To committee on Environmental Protection.

Assembly Bill 1045

Relating to revising the metallic mining reclamation act, granting rule-making authority and providing penalties.

By Representatives Munts, Hasenohrl, Dueholm, Lato, Kincaid, Wahner, Kedrowski, Ferrall, Moody, Fischer, Metz, Schneider, Loftus, Day, Lorman, Jackamonis, Dandeneau, Bear, Gerlach and Flintrop, co-sponsored by Senators Radosevich, Braun, Dorman, Cullen, Berger, Risser, Bablitch, Krueger and Bidwell, by request of Special Study Committee on Mineral Taxation and Senate Select Committee on Mining Development.

To committee on Environmental Protection.

Assembly Bill 1046

Relating to application of civil service law to certain law enforcement and fire fighting personnel.

By Representative Looby.

To committee on Labor.

COMMUNICATION

State of Wisconsin
Department of State
Madison

To Whom It May Concern:

Dear Sir: Acts, joint resolutions and resolutions, deposited in this office, have been numbered and published as follows:

Bill, Jt. Res. or Res.	Chapter No.	Publication date
Assembly Bill 100	105	October 15, 1977
Assembly Bill 556	106	October 21, 1977
Assembly Bill 664	107	October 20, 1977
Assembly Bill 764	109	October 24, 1977
Assembly Bill 991	111	October 24, 1977
Assembly Jt Res 20	Enrolled 18	October 21, 1977

DOUGLAS LaFOLLETTE
Secretary of State

State of Wisconsin
Department of Justice
Madison

October 21, 1977

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

Dear Mr. Bolle:

This is in response to the request contained in **Assembly Resolution No. 30** for my opinion concerning the authority of the Secretary of Health and Social Services to fund nontherapeutic or elective abortions for indigent women under Wisconsin's medical

assistance statutes, secs. 49.45 and 49.46, completely out of state funds.

It is my understanding that the Department of Health and Social Services has been providing state funding in the amount of a 40% state share for hospital and physician services for elective abortions under the state medical assistance program since April, 1973. The remaining 60% share was provided as reimbursement from federal funds available to the state through Title XIX of the Social Security Act.

In June, 1977, the U.S. Supreme Court in *Maher v. Roe*, ——U.S.——, 97 S. Ct. 2376 (1977), held that a state participating in the Medicaid program was not constitutionally required to pay the expenses incident to nontherapeutic abortions for needy women simply because it had also made a policy choice in favor of paying expenses incident to childbirth. In a companion case, *Beal v. Doe*, ——U.S.——, 97 S. Ct. 2366 (1977), the Court held that the Social Security Act did not require the funding of nontherapeutic abortions as a condition of participation in the Medicaid program. Subsequently, a lower federal court's injunction against enforcement of a federal statute forbidding the use of Title XIX funds for nontherapeutic abortions was dissolved, and the states, including Wisconsin, were notified that no additional federal matching funds would be available for that purpose.

The Wisconsin medical assistance statutes contain no restriction on the use of state funds to pay for physician and hospital services for elective abortions. In view of the Legislature's failure to restrict medical assistance payments for abortion-related expenses, and its approval of successive appropriations for that purpose in the budget bills enacted in 1973, 1975 and 1977, it cannot be said to a legal certainty that Secretary Percy's policy decision in August, 1977, to continue such coverage under the state program using only state money is contrary to law.

Moreover, in the *Maher* case, the U.S. Supreme Court stated that the proper forum for the resolution of this issue is the Legislature. There, the Court said:

> "The decision whether to spend state funds for nontherapeutic abortion is fraught with judgments of policy and value over which opinions are sharply divided. ... When an issue involves policy choices as sensitive as those implicated by public funding of nontherapeutic abortions,

the appropriate forum for their resolution in a democracy is the legislature." Id. at 2385-6. (emphasis supplied)

Accordingly, in view of the foregoing, it is my opinion that the issue of this state's public policy concerning the funding of nontherapeutic abortions under the medical assistance statutes should be decided by the Legislature and not by an opinion of this Department.

Sincerely yours,
BRONSON C. La FOLLETTE
Attorney General

COMMITTEE REPORTS

The committee on Excise and Fees reports and recommends:

Assembly Bill 812

Relating to restrictions on certain fermented malt beverage and intoxicating liquor licensees' contributions to trade associations.

Adoption of assembly amendment 1:
Ayes: (7) Noes: (1)

Passage: Ayes: (7) Noes: (1)
To committee on Rules.

Assembly Bill 897

Relating to bartender license fees.

Passage: Ayes: (8) Noes: (0)
To committee on Rules.

Senate Bill 375

Relating to requiring signs indicating brands sold from automatic liquor dispensers and providing a penalty.

Concurrence: Ayes: (8) Noes: (0)
To committee on Rules.

EUGENE DORFF
Chairperson

The committee on Labor reports and recommends:

Senate Bill 118

Relating to the required frequency of wage payments to certain employes.

Concurrence: Ayes: (9) Noes: (0)
To committee on Rules.

JOSEPH LOOBY
Chairperson

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
385	123	October 22, 1977
177	124	October 25, 1977
219	125	October 25, 1977
238	126	October 25, 1977
337	127	October 25, 1977
480	128	October 25, 1977
495	129	October 25, 1977
618	130	October 25, 1977
704	131	October 25, 1977
724	132	October 25, 1977
938	133	October 25, 1977

Respectfully submitted,
MARTIN J. SCHREIBER
Acting Governor

GOVERNOR'S VETO MESSAGES

October 25, 1977

To the Honorable Members of the Assembly:

I am returning **Assembly Bill 150** without my approval.

Assembly Bill 150 exempts certain beekeepers from licensing and inspection requirements administered by the Department of

Agriculture, Trade and Consumer Protection. In general, the exemption would apply to beekeepers who market raw honey if a "substantial" share of that honey is produced by the beekeeper (as opposed to having been purchased for resale from another beekeeper). Such an exemption will significantly increase the amount of honey marketed in Wisconsin which comes from facilities not subject to state food inspection safeguards. This step backward is not warranted by whatever benefits might result to the exempted beekeepers.

There appears to be two major reasons advanced by the proponents of AB 150 in urging its adoption. First, it is stated that the exemption will provide equity between certain beekeepers and dairy farmers. Second, I am informed that some beekeepers believe the current licensing procedure results in them paying an unfair tax burden. I would like to comment on both of these points.

It is argued that the extraction of honey from the comb is little different than the milking of a cow, and that because many dairy farmers are exempt from licensing, so, too, should beekeepers. However, AB 150 provides a broader exemption for beekeepers than is available for dairy farmers, who can only be exempt if all their milk is marketed through a licensed milk processing plant. AB 150 does not have such a restriction on beekeepers; if it did, the proposal would be much more acceptable.

It also is alleged that some beekeepers receive higher property tax assessments if they are licensed than if they are not. This is apparently based on the fact that some local assessors place higher relative assessments on licensed, "commercial" property than on unlicensed, "agricultural" property. Because of this distinction, some proponents of AB 150 apparently believe their property taxes will decline (by virtue of a reduced assessment) if they are not required to have a license. I would emphasize that such differential assessment practices are not lawful. Unless specifically exempted by the Constitution, all taxable property (agricultural, residential, commercial, etc.) must be assessed on the same basis, namely, current market value. It is not lawful for an assessor to purposely assess certain classes of property at a lower or higher percentage of market value. If such improper assessments are being made, the appropriate recourse for the taxpayer is to appeal to the local Board of Review and, if necessary, to the State Department of Revenue. It is not appropriate to exempt certain food products from licensing and inspection in order to offset an alleged local tax discrepancy.

I am also concerned that the classification created by AB 150 may not be considered reasonable and that it could threaten the validity of this and other portions of Wisconsin's food licensing laws. Under AB 150, the only person who would not be exempt would be a beekeeper who would buy "substantial" quantities of honey from other producers. From a food law and health standpoint, it makes little sense to say that someone who markets honey would be subject to licensing solely on the basis of where he gets the product. This would be like saying a dairy farmer could bottle and sell milk from his own herd without a license but that another person who purchased some milk could not resell it without a license.

Finally, from an administrative standpoint, AB 150 could create more inequities than it purports to resolve. This is because the distinction between those who are exempt and not exempt is based largely on interpretation of what the word "substantially" means. Such an imprecise definition is likely to result in different treatment for beekeepers in similar circumstances.

For these reasons, I urge the legislature to sustain this veto and to consider alternative legislation which does not create the problems associated with AB 150.

Respectfully submitted,
MARTIN J. SCHREIBER
Acting Governor

October 25, 1977

To the Honorable Members of the Assembly:

I am returning **Assembly Bill 221** without my approval.

Assembly Bill 221 would have required the Department of Transportation to establish a Medical Review Board to make recommendations on cases appealed by persons who have had their license to operate a motor vehicle cancelled or denied because of physical or mental disabilities. The bill mandated that the Department of Transportation establish administrative rules upon which the review board recommendations would be based. It also specified that the administrative rules which the Department of Transportation promulgated for the review board be approved, prior to implementation, by the appropriate standing committee of each house of the legislature.

Although I support the establishment of this Medical Review Board, I have vetoed Assembly Bill 221 because of the provision which requires prior legislative approval of administrative rules.

Prior legislative approval of administrative rules would unnecessarily involve the legislature in policy implementation and administrative detail -- traditionally an executive branch function. While the legislature has a responsibility to insure that the legislative intent of Assembly Bill 221 is adequately reflected in the proposed administrative rules, this can and is being accomplished by existing legislative oversight procedures. Currently, legislative standing committees receive and have an opportunity to review all proposed administrative rules. They can require an administrative agency to meet with them to discuss the proposed administrative rules. After administrative rules are adopted, the Joint Committee for the Review of Administrative Rules has the authority under ss. 13.56 (2), Wis. Stats., to suspend existing administrative rules. This combination of legislative oversight of agency administrative rule-making is adequate. Additional oversight authority is unnecessary.

I am also aware of an Attorney General's opinion of May 20, 1974, which concluded that an administrative rule may not be suspended or revoked by joint resolution of the legislature (whether or not authorized by law) or by action of a legislative standing or joint committee. In the Attorney General's view, there may be some situations where the legislature can empower itself or one of its committees to approve or disapprove administrative rules, but such power would have to be subject to judicial review and other limitations not provided by this bill. The Attorney General's opinion causes doubt as to the constitutionality of this bill and provides a further basis for its disapproval.

I encourage the legislature to adopt a proposal to establish a Medical Review Board to make recommendations on cases appealed by persons who have had their license to operate a motor vehicle cancelled or denied because of physical or mental disabilities without the provision that the proposed administrative rules be approved, prior to implementation, by the legislature.

Respectfully submitted,
MARTIN J. SCHREIBER
Acting Governor

October 25, 1977

To the Honorable Members of the Assembly:

I am returning **Assembly Bill 364** without my approval.

Assembly Bill 364 would allow up to four motorcycles or bicycles to park in one parking stall. This compares with existing law which defines motorcycles and bicycles the same as all other vehicles for parking purposes, and therefore only one is allowed per stall.

The worthy purpose of AB 364 is to make more efficient use of space devoted to parking and to reduce unwarranted restrictions on the number of cycles which can be parked in Wisconsin communities. However, I have found it necessary to veto this bill because (1) it will create cumbersome and inequitable enforcement problems for local officials, and (2) local governments already have the ability to meet the goals sought by this bill.

Examples of the enforcement problems which would be created by AB 364 are as follows:

First, if more than four cycles were parked in a stall, it would be impossible in most cases for authorities to determine which was in violation.

Second, if the time on a parking meter had elapsed, the only feasible administrative procedure would be to ticket each cycle in a stall. That would not appear to be equitable, inasmuch as the time each cycle had been in the stall would normally differ, as well as the amount each owner had paid into the meter.

Although there might be ways to surmount the problems listed above, I do not believe local governments should be required to cope with these problems when more feasible alternatives exist. For example, the City of Madison has used its existing statutory authority to divide parking stalls into several smaller stalls for cycles. Such a step meets the policy objectives of AB 364 without creating any of the administrative and enforcement problems already cited.

AB 364 does allow municipalities the ability to nullify its effect by passage of a local ordinance restricting each stall for use only by a single vehicle. This would be done under the authority granted by 349.13 authorizing local units to establish parking ordinances more restrictive than existing statutory parking restrictions. However, it does place communities in a position which forces them

to react in a negative manner to offset the multiple cycle parking statute.

With each local unit having the ultimate option on multiple cycle parking there will be no consistent statewide law in this regard. Those communities that would not allow multiple cycle parking would have to post this decision and hope that cyclists entering the community are then aware that multiple cycle parking is illegal within its corporate limits. As a result, there would be confusion among cyclists as they traveled from city to city within the state.

Because of the problems which might result from enactment of AB 364, I believe many local governments would exercise their option to not be bound by its provisions if I were to sign the bill. Rather than put local officials in that position, I hope you will vote to sustain my veto of AB 364.

Respectfully submitted,

MARTIN J. SCHREIBER

Acting Governor