

STATE OF WISCONSIN

Assembly Journal

Eighty-Third Regular Session

WEDNESDAY, December 14, 1977.

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

AMENDMENTS OFFERED

Assembly substitute amendment 1 to **Assembly Bill 557** offered by committee on Commerce and Consumer Affairs.

Assembly substitute amendment 1 to **Assembly Bill 720** offered by committee on Local Affairs.

Assembly substitute amendment 1 to **Assembly Bill 773** offered by committee on Local Affairs.

Assembly amendment 1 to **Assembly Bill 824** offered by committee on Local Affairs.

Assembly substitute amendment 1 to **Assembly Bill 848** offered by Representative Litscher.

Assembly substitute amendment 1 to **Assembly Bill 874** offered by committee on Criminal Justice and Public Safety.

Assembly substitute amendment 1 to **Assembly Bill 884** offered by committee on Elections.

Assembly substitute amendment 1 to **Assembly Bill 889** offered by Representative Medinger.

Assembly substitute amendment 1 to **Assembly Bill 945** offered by Representatives Swoboda and Merkt.

Assembly substitute amendment 1 to **Assembly Bill 965** offered by Representatives Loftus and Olson.

Assembly amendment 1 to **Assembly Bill 1031** offered by committee on Elections.

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Assembly amendment 1 to Assembly Bill 1038 offered by Representative Medinger.

Assembly amendment 1 to Assembly Bill 1044 offered by committee on Environmental Protection.

Assembly amendment 1 to Assembly Bill 1045 offered by committee on Environmental Protection.

Assembly amendment 1 to Assembly Bill 1056 offered by committee on Judiciary.

Assembly substitute amendment 1 to Assembly Bill 1067 offered by committee on Judiciary.

Assembly amendment 1 to Assembly Bill 1075 offered by committee on Judiciary.

Assembly amendment 1 to Assembly Bill 1078 offered by committee on Judiciary.

Assembly amendment 2 to Assembly Bill 1078 offered by committee on Judiciary.

INTRODUCTION AND REFERENCE OF RESOLUTIONS

Read and referred:

Assembly Joint Resolution 80

Granting the use of the senate and assembly chambers to Wisconsin Y.M.C.A. Youth in Government, Model Legislature in 1978, for the purpose of holding a practice legislative session.

By Representatives Schneider and Jackamonis, co-sponsored by Senator McCallum.

To committee on Rules.

INTRODUCTION AND REFERENCE OF BILLS

Read first time and referred:

Assembly Bill 1090

Relating to providing an appropriation for reconstruction of the Portage levee.

By Representative Thompson, co-sponsored by Senator Bidwell.
To committee on Environmental Protection.

Assembly Bill 1091

Relating to specifying that only female criminal and youthful offenders be placed in Taycheedah correctional institution.

By Representatives Hephner and McEssy.

To committee on Criminal Justice and Public Safety.

Assembly Bill 1092

Relating to the use of electronic devices in telephone solicitation and providing a penalty.

By Representatives Wood, Lallensack and Metz, co-sponsored by Senator Cullen.

To committee on State Affairs.

Assembly Bill 1093

Relating to the prohibition of the sale, distribution or use of the chemical compound 2, 4, 5 T and providing penalties.

By Representatives Loftus, Kedrowski, Becker, Metz and Munts.

To committee on Environmental Protection.

Assembly Bill 1094

Relating to eliminating mandatory retirement by age for public employes and increasing an appropriation.

By Representatives Loftus, Clarenbach, Bear, Becker, Metz, Tesmer, Ferrall and Thompson, co-sponsored by Senators Cullen, Offner and Braun.

To committee on State Affairs.

Assembly Bill 1095

Relating to authorization for the department of health and social services to approve limited use of experimental private domestic sewage treatment and disposal systems during the next 5 years.

By Representatives Day, Lallensack, Fischer, Hasenohrl, Byers, Kincaid, Donoghue, Opitz, Kedrowski, Dandeneau and Thompson, co-sponsored by Senators Krueger, Chilsen, Lasee, Morrison, Maurer, Harnisch and Van Sistine.

To committee on Natural Resources.

Assembly Bill 1096

Relating to restricting the use of Taycheedah correctional institution to confinement of female offenders, the Taycheedah correctional institution-housing and supporting facilities project, and decreasing an appropriation.

By Representatives Hephner and McEssy.

To committee on Criminal Justice and Public Safety.

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 475 -----	181 -----	December 7, 1977
Assembly Bill 626 -----	182 -----	December 8, 1977
Assembly Bill 702 -----	183 -----	December 8, 1977
Assembly Bill 726 -----	184 -----	December 8, 1977
Assembly Bill 865 -----	185 -----	December 8, 1977
Assembly Bill 464 -----	189 -----	December 8, 1977
Assembly Bill 488 -----	190 -----	December 8, 1977
Assembly Bill 738 -----	191 -----	December 8, 1977

DOUGLAS LaFOLLETTE
Secretary of State

The State of Wisconsin
Department of Justice
Madison

December 13, 1977

The Honorable, The Assembly
State Capitol
Madison, Wisconsin 53702

Re: Unconstitutionality of Ch. 260, Laws of 1973

Dear Representatives:

Chapter 260 of the Laws of 1973 created secs. 700.30 and 893.075, Stats., relating to the registration of, payment of fees for and reversion of mineral rights separate from surface fee ownership.

The second section of that legislation directed my predecessor promptly to commence an action seeking a declaratory judgment regarding the constitutionality of the act. This was not done because of the impossibility of manufacturing a justiciable case or

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controversy, a necessary condition precedent to the exercise of judicial jurisdiction.

The Northwestern and Milwaukee railroads, however, did commence such a suit in the circuit court for Bayfield County, naming Register of Deeds Earl H. Pedersen and then Attorney General Victor A. Miller, and all others similarly situated, as defendants. Judge Lewis J. Charles ruled that the chapter violated the due process and equal protection guarantees of the Federal Constitution, and the uniformity of taxation requirement of the Wisconsin Constitution. The chapter was held unconstitutional in its entirety, and the defendants were permanently enjoined from enforcing its provisions.

This office appealed Judge Charles' decision to the state supreme court. On November 14, 1977, the court affirmed the judgment below (*Chicago and Northwestern Transportation Co. et al. v. Pedersen et al.*, No. 75-702), holding the chapter unconstitutional because its enforcement provisions deny procedural and substantive due process. The court was concerned about the lack of notice and opportunity for a hearing before severed mineral rights were lost, and about the reversion of rights to private owners without compensation. The court further determined that the penalty provisions could not be severed from the rest of the legislation. Because of these conclusions the court found it unnecessary to reach the equal protection or uniformity of taxation issues.

The supreme court's action, upholding the injunction against enforcement of secs. 700.30 and 893.075, Stats., by all registers of deeds in Wisconsin, renders those provisions null and void and of no effect.

Sincerely,
BRONSON C. La FOLLETTE
Attorney General

OPINION OF THE ATTORNEY GENERAL

The State of Wisconsin
Department of Justice
Madison

December 12, 1977

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OAG 101-77

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

Dear Mr. Bolle:

By 1977 Assembly Resolution 26, the Wisconsin State Assembly has requested my opinion concerning the constitutionality of sec. 70.11(24), Stats., relating to a property tax assessment exclusion for improvements for property in a "conservation area."

The statute in question provides that any city, town or village may establish a conservation area by resolution of its governing board. The statute provides that such resolution shall state, among other things, the boundaries of the area, the substandard, outworn or outmoded condition of the buildings in the area, that these conditions depreciate values, impair investments and reduce the capacity to pay taxes, and that it is necessary to create inducements and opportunities for employment of private investment and capital in the rehabilitation and conservation of the area. The statute provides that any improvement made by an owner after the adoption of such a resolution, through private investment to any existing completed structure in the area, shall be excluded by the assessor in arriving at the assessment of the real estate, but not to exceed a certain maximum. This assessment exemption may continue for five assessment years, and the maximum value of any assessment exclusion for said five-year period shall either be \$1,000 or ten percent of the value of the improved property, as determined by the governing body of the municipality. The statute contains other provisions with respect to how an owner may apply for such an assessment exemption and how such exemption shall be determined and reviewed.

The statute is intended to give certain property owners a partial exemption from taxation by use of the assessment exemption related to certain improvements made upon the property.

It is my opinion that sec. 70.11(24), Stats., is unconstitutional as a violation of the requirement of uniformity contained in Wis. Const. art. VIII, sec. 1.

In *Gottlieb v. Milwaukee*, 33 Wis.2d 408, 147 N.W.2d 633 (1967), the Wisconsin Supreme Court struck down as being

violative of the uniformity clause the "urban redevelopment law" set forth in sec. 66.405 to sec. 66.425, Stats., inclusive. That law authorized local governing bodies of Wisconsin cities to enter into contracts with persons who had formed redevelopment corporations. These contracts required the erection of buildings or improvements according to an approved plan in an area of the city found to be substandard or insanitary in exchange for the privilege of a partial tax freeze. This meant that the redevelopment corporation could be exempt for a period of not more than 30 years from paying anything more than the "maximum local tax" which was defined as the tax that would have been payable if computed on the last assessed valuation of the parcel of real estate prior to the transfer of the property to the redevelopment corporation. The court went into considerable detail explaining the standards for tax uniformity required by the Wisconsin Constitution. 33 Wis.2d at 416-426. The court said:

"... It is apparent that the property of the redevelopment corporation is subject to a portion of the property tax, but by a statutory concession it is not subject to all of the tax that would fall on other property of equal current value. It is partially exempt.

"For reasons that the legislature considers sufficient, the property of the redevelopment corporation is given preferential treatment and bears less of its tax burden on the true *ad valorem* basis than does other property. This law accomplishes its intended, but constitutionally prohibited, purpose -- the unequal taxation of property. Property taxes where such a freeze is in force are not uniform in their impact on property owners. Such lack of uniformity is accomplished by a prohibited partial exemption from taxation. ..." 33 Wis.2d at 429.

Section 70.11(24), Stats., suffers from this same infirmity. Even though this statute, like the one in *Gottlieb*, has the laudable purpose of contributing to the public welfare by the encouragement of worthwhile private enterprise, it is apparent that the property of owners who have made certain improvements is subject to a portion of the property tax; but by sec. 70.11(24), Stats., it is not subject to all of the tax that would fall on other property of equal current value; it is thus partially exempt. These owners who have made these improvements are given preferential treatment, and their property bears less of its tax burden on the true *ad valorem* basis than does other property. Other taxpayers holding equally valuable

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property will be paying a disproportionately higher share of local property taxes.

I have taken into account the strong presumption of constitutionality enjoyed by every statute. However, because of the strong similarity between this statute and the urban redevelopment law struck down by the court in the *Gottlieb* case, I am of the opinion that sec. 70.11(24), Stats., is unconstitutional as violative of Wis. Const. art. VIII, sec. 1.

Sincerely yours,
BRONSON C. La FOLLETTE
Attorney General

CAPTION:

Section 70.11(24), Stats., is unconstitutional as violative of the uniformity clause in Wis. Const. art. VIII, sec. 1.

OAG 104-77

Mr. Everett E. Bolle
Assembly Chief Clerk
Wisconsin Legislature
220 West, State Capitol
Madison, Wisconsin 53702

Dear Mr. Bolle:

Upon the direction of the Wisconsin State Assembly you have requested my opinion regarding the constitutionality of federalizing the Wisconsin income tax. **Assembly Resolution 11** states in full:

“Resolved by the assembly, That the attorney general is requested to provide an opinion as to the constitutionality of federalizing the Wisconsin income tax by establishing the tax as a percentage of the federal income tax owed by the taxpayer, without any modifications, adjustments or deductions.”

There is no specific proposed legislation before me to examine.

Wisconsin “federalized” its individual income tax some time ago by adopting ch. 163, Laws of 1965. This was accomplished by incorporating definitions into the Wisconsin law identical to those found in the federal internal revenue code. However, certain differences remained, including, among other things, nonrecognition of preferential capital gain treatment, treatment of

deductions, separate filing requirements for spouses, inclusion of interest on state and municipal obligations, exclusion of interest on federal obligations, and special treatment for numerous problems arising out of residency status. Many of these differences are reflected by the modifications in sec. 71.05, Stats. Some of these differences are required to satisfy constitutional requirements, such as the exclusion of interest on federal obligations and the treatment of income received while a nonresident of Wisconsin.

Accordingly, it would not be constitutional to establish the state income tax as a percentage of the federal income tax, as the resolution provides, without any modifications to satisfy such constitutional requirements.

Another constitutional question raised is whether such a scheme of taxation constitutes an unconstitutional delegation of state legislative powers to the federal government. Wisconsin Constitution art. IV, sec. 1, provides that "The legislative power shall be vested in a senate and assembly." No one of the three branches of government can effectively delegate any of the powers which peculiarly and intrinsically belong to that branch. *State v. Wakeen*, 263 Wis. 401, 407, 57 N.W.2d 364, 367 (1953); *Rules of Court Case*, 204 Wis. 501, 503, 236 N.W. 717, 718 (1931).

The following quotations from 50 Op. Att'y Gen. 107 (1961) place the delegation issue into its proper perspective:

"The general rule is that a 'state legislature has no power to delegate any of its legislative powers to any outside agency such as the Congress of the United States. * * * A state legislature does not invalidly delegate its legislative authority by adopting the law or rule of Congress, if such law is already in existence or operative.' 11 Am. Jur. 930, 931, 16 C.J.S. 563. 'It is generally held that the adoption by or under authority of a state statute of prospective Federal legislation, or Federal administrative rules thereafter to be passed, constitutes an unconstitutional delegation of legislative power. In some cases, however, it has been held that there was no unconstitutional delegation of authority by a state statute which provided that prospective Federal legislation should control.' 11 Am. Jur. Sec. 219, 1961 supplement p. 141, 16 C.J.S. 564.

* * *

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"In *George Williams College v. Williams Bay* (1943) 242 Wis. 311, 316, 7 N.W. 2d 891, it is stated:

*** By this doctrine [legislation by reference] when a statute adopts the general law on a given subject, the reference is construed to mean that the law is as it reads thereafter at any given time including amendments subsequent to the time of adoption. This is to be contrasted with adoption by reference of limited and particular provisions of another statute, in which case the reference does not include subsequent amendments. ***"

Alaska's territorial income tax law which was based on a percentage of the federal tax paid had its constitutionality upheld in *Alaska Steamship Co. v. Mullaney*, 180 F.2d 805, 815 (9th Cir. 1950). The court found it would be appropriate to incorporate by reference specific provisions of the federal law such as was done by ch. 163, Laws of 1965.

The problem of incorporating provisions into enactments by reference to future acts of other legislative bodies is avoided by the periodic updating of Wisconsin's reference to the federal law. Chapter 29, Laws of 1977, for instance, updated the reference to the federal internal revenue code to December 31, 1976, by amending sec. 71.02(2)(b)2 and creating sec. 71.02(2)(b)3, Stats. Thus, for the 1977 taxable year and thereafter, taxpayers will use the federal internal revenue code in effect on December 31, 1976, in computing adjusted gross income and itemized deductions, with two exceptions in the areas of child care expenses and special tax treatment of certain pollution control facilities. These two exceptions demonstrate that periodic updating and strict scrutiny by the state Legislature of the federal internal revenue code, which the Constitution was intended to insure, may result in the adoption of differences between the federal and state tax systems, inconsistent with the objectives of "simplification," but apparently in response to more compelling policy considerations.

Any attempt to federalize corporate income taxes must keep in mind that corporations must have their incomes apportioned between the states in which they are doing business. Apportionment of corporate income between states, of course, is not necessary for federal income tax purposes. An unapportioned tax, by its very nature, makes interstate commerce bear more than its fair share of taxation. See 71 Am. Jur. 2d *State and Local Taxation* sec. 456.

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The essential difference between the present proposal suggested by Assembly Resolution 11 and the current law is that the basis for the individual income tax would be the federal tax due instead of federal taxable income. This difference is not dramatic, nor does it lead to any more "simplification" or "federalization" than is possible under the present scheme of taxation. Some state and federal differences, such as those related to capital gains treatment and reporting of combined incomes by spouses, could be eliminated under our present simplified federalized income tax law as policy considerations may dictate. Other differences, such as those related to interest on government obligations and residency, are constitutionally mandated, and would be just as necessary under a state law based on federal tax due as a state law based on federal taxable income.

Sincerely yours,
BRONSON C. La FOLLETTE
Attorney General

CAPTION:

Discussion of constitutional and policy considerations associated with federalization of state income tax laws.

COMMITTEE REPORTS

The committee on Commerce and Consumer Affairs reports and recommends:

Assembly Bill 936

Relating to sale of motor fuel by metric measure and providing a penalty.

Passage: Ayes: (7) Noes: (2)

To committee on Rules.

Assembly Bill 557

Relating to creating a citizens utility board to advocate for residential consumers in public utility matters and providing a penalty.

Adoption of assembly substitute amendment 1:

Ayes: (9) Noes: (0)

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Passage: Ayes: (5) Noes: (4)
To Joint Survey Committee on Tax Exemptions.

MIDGE MILLER
Chairperson

The committee on Environmental Protection reports and recommends:

Assembly Bill 1044

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

Adoption of assembly amendment 1:
Ayes: (7) Noes: (0)

Passage: Ayes: (7) Noes: (0)
To Joint Committee on Finance.

Assembly Bill 1045

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

Adoption of assembly amendment 1:
Ayes: (7) Noes: (0)

Passage: Ayes: (7) Noes: (0)
To Joint Committee on Finance.

MARY LOU MUNTS
Chairperson

The committee on Judiciary reports and recommends:

Assembly Bill 898

Relating to various changes in the state mental health act and related provisions, granting rule-making authority and providing penalties.

Adoption of assembly substitute amendment 1:
Ayes: (9) Noes: (0)

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

JAMES RUTKOWSKI
Chairperson

The Joint Committee on Finance reports and recommends:

Assembly Bill 1024

Relating to establishing a hazardous waste management program under the department of natural resources, establishing a waste management fund, creating a manufacturing machinery and equipment tax exemption, revising the department's regulation of the planning, establishment and operation of solid waste disposal sites and facilities, granting rule-making authority, making an appropriation and providing a penalty.

Adoption of assembly amendment 1:

Ayes: (11) Noes: (0)

Adoption of assembly amendment 2:

Ayes: (11) Noes: (0)

Adoption of assembly amendment 3:

Ayes: (11) Noes: (0)

Adoption of assembly amendment 4:

Ayes: (11) Noes: (0)

Passage: Ayes: (11) Noes: (1)

To committee on Rules.

Assembly Bill 1047

An act to appropriate \$80,000 from the transportation fund for payment of a claim made by Hammersley construction Company, Inc. against the state.

Indefinite postponement: Ayes: (12) Noes: (0)

To committee on Rules.

GARY JOHNSON
Assembly Chairperson