

JOURNAL OF THE ASSEMBLY [August 12, 1971]

STATE OF WISCONSIN

# Assembly Journal

Eightieth Regular Session

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THURSDAY, August 12, 1971.

9:00 A.M.

The assembly met.

The speaker in the chair.

The roll call was dispensed with.

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## AMENDMENTS OFFERED

Assembly substitute amendment 1 to Assembly Bill 896 offered by Representative Wahner.

Assembly amendment 3 to Assembly Bill 871 offered by Representatives Lynn and Jackamonis.

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## INTRODUCTION AND REFERENCE OF BILLS

Read first time and referred:

### Assembly Bill 1220

Relating to implied consent and penalties for drunken driving.

By Representatives McCormick, Schneider, Jones, Pabst, Boeckmann, G. K. Johnson, Oestreicher, Slaby, Hanson, Roberts, Early, Rutkowski, Oberle, Day and Willkom, by request of Governor Patrick J. Lucey.

To committee on Judiciary.

## **JOURNAL OF THE ASSEMBLY [August 12, 1971]**

### **Assembly Bill 1221**

Relating to implied consent for prearrest screening of alcohol content of breath.

By Representatives McCormick, Schneider, Pabst, Rogers, Mittness, G. K. Johnson, Mato, Oestreicher, Hanson, Roberts and Early, by request of Governor Patrick J. Lucey.

To committee on Judiciary.

### **Assembly Bill 1222**

Relating to increasing penalties for driving after license revocation or suspension.

By Representatives McCormick, Jones, Rogers, Boeckmann, Mittness, G. K. Johnson, Mato, O'Malley, Early, Roberts, Oberle and Willkom, by request of Governor Patrick J. Lucey.

To committee on Judiciary.

### **Assembly Bill 1223**

Relating to legal presumptions as to intoxication based on percentages of alcohol in the blood.

By Representatives McCormick, Boeckmann, Mittness, G. K. Johnson, Dueholm, Early and Roberts, by request of Governor Patrick J. Lucey.

To committee on Judiciary.

### **Assembly Bill 1224**

Relating to a sales tax exemption for dental laboratory services and products.

By Representative Froehlich, by request of Richard Binsfield, D.D.S.

To joint Survey committee on Tax Exemptions.

### **Assembly Bill 1225**

Relating to creating a home improvement examining board, granting rule-making authority, making an appropriation and providing penalties.

By Representatives Berger, Rutkowski, Orlich, Wahner, Lynn, Bultman, Jackson, Otte, Barbee and Kleczka, by request of the The Home Improvement Council of Greater Milwaukee.

To committee on Commerce and Consumer Affairs.

## **JOURNAL OF THE ASSEMBLY [August 12, 1971]**

### **Assembly Bill 1226**

Relating to county subdivision control.  
By Representatives Helgeson and Alberts.  
To committee on Municipalities.

### **Assembly Bill 1227**

Relating to physicians on duty in hospitals.  
By Representative Tobiasz.  
To committee on Health and Social Services.

### **Assembly Bill 1228**

Relating to prohibiting credit organizations from profiting from sales of credit life, accident or health insurance.  
By Representatives Sanasarian, Bultman and Ferrall.  
To committee on Commerce and Consumer Affairs.

### **Assembly Bill 1229**

Relating to county acquisition of transportation systems.  
By Representatives Sanasarian, Sensenbrenner, Earl, Conta, Kessler, Tobiasz, Wahner, Barbee, Pabst, Czerwinski, Brown, Nager and Anderson; co-sponsored by Senator Dorman, by request of Milwaukee County.  
To committee on Municipalities.

### **Assembly Bill 1230**

Relating to granting formula retirement credit to Judge Joseph H. Riedner.  
By Representative Early.  
To joint Survey committee on Retirement Systems.

### **Assembly Bill 1231**

Relating to including "governmental guides" in telephone directories.  
By Representatives Jackamonis, Rutkowski, Wahner, Berger, Mittness, Baldus, Miller, Mielke, Bultman, Ferrall, Mohn, R. M. Thompson, Day, Hanson and Kessler.  
To committee on State Affairs.

JOURNAL OF THE ASSEMBLY [August 12, 1971]

COMMUNICATION

The State of Wisconsin  
Department of Justice  
Madison

August 11, 1971.

The Honorable, The Assembly  
State Capitol  
Madison, Wisconsin 53702

Gentlemen: **Assembly Bill 64 (1971)** if enacted would revamp Wisconsin's statutes pertaining to incorporation, annexation and consolidation. It creates a state, three-man boundary review board and establishes statutory standards against which all incorporations and annexations are measured. All annexations, other than municipally-owned territory, have been made subject to review and approval by the boundary review board prior to becoming effective.

As to certain annexations, mainly those based on petitions from electors and landowners of the area proposed to be annexed, referendum approval within such area would be required as under present law. Section 23 of the bill amends 66.021 (5) (a) to retain referendum in certain cases, and sec. 66.021 (5) (g) which provides that "If the result of the referendum is against annexation, all previous proceedings shall be nullified" is not repealed.

No referendum within the area proposed to be annexed is provided for where the proposed annexation is initiated by the city or village *under a boundary expansion program plan* pursuant to proposed sec. 66.022 contained in section 33 of the bill, and which has been proven and approved. A two-thirds vote of the members-elect of the governing body of the municipality can effect such annexation following state board approval.

**Assembly Resolution 27 (1971)** requests my opinion whether the legislature can constitutionally provide for annexation of territory without referendum for approval by the electors and landowners in the territory to be annexed.

It is my opinion that it can. There is no right of referendum guaranteed by either the United States or Wisconsin Constitutions.

## JOURNAL OF THE ASSEMBLY [August 12, 1971]

In *McQuillin, Municipal Corporations*, Vol. 2, sec. 7.17, p. 344, it is stated:

"Unless otherwise provided by the state constitution, it is discretionary with the legislature to provide for a referendum on the question of the extension of corporate limits."

At Vol. 2, sec. 7.16, p. 343, of the same authority, it is stated:

"The constitutionality of laws providing for annexation without the consent of the inhabitants has in many cases been sustained."

In *School Dist. v. Callahan* (1941), 237 Wis. 560, 570, 297 N.W. 407, the court quoted with approval the following statement in *Hunter v. Pittsburgh*, 207 U.S. 161, 178, 179, 28 Sup. Ct. 40, 52 L. Ed. 151:

"'Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted to them. . . . The state, therefore, at its pleasure, may . . . expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the state is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the constitution of the United States. Although the inhabitants and property owners may, by such changes, suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right, by contract or otherwise, in the unaltered or continued existence of the corporation or its powers, and there is nothing in the federal constitution which protects them from these injurious consequences. The power is in the state, and those who legislate for the state are alone responsible for any unjust or oppressive exercise of it.'"

This statement was again quoted with approval in *State v. Mutter* (1964), 23 Wis. 2d 407, 413, 127 N.W. 2d 15. Also see *Zawerschnik v. Joint County School Comm.*

## JOURNAL OF THE ASSEMBLY [August 12, 1971]

(1955), 271 Wis. 416, 73 N.W. 2d 566, and opinion at 56 OAG 145 (1967).

Wisconsin statutes have not always required or permitted referendum proceedings in connection with annexations. In *Town of Wilson v. City of Sheboygan* (1939), 230 Wis. 483, 488, 283 N.W. 312, it was held that, although then sec. 62.07 (2) (c) did provide for a referendum in detachment proceedings, no similar provision applied to attachment proceedings and no referendum could be had under the direct legislation statute, then sec. 10.43, since that section did not apply to ordinances already passed.

In *State ex rel. Madison v. Walsh* (1945), 247 Wis. 317, 324, 19 N.W. 2d 299, it was held that towns could not contest the validity of annexation of territory by a city by showing that after passage of the annexation ordinance the town boards had conducted a referendum in which the vote was against the detachment of the territory, since the statutes then in force made no provision for a referendum in case of annexation proceedings.

In *Milwaukee v. Sewerage Comm.* (1954), 268 Wis. 342, 67 N.W. 2d 624, it was held that the statute dealing with consolidation of municipal corporations, sec. 66.02, was constitutional and that while the legislature cannot delegate the power to make a law it can lay down fundamentals and standards and delegate to administrative agencies authority to exercise such legislative power as is necessary to carry into effect the general legislative purpose. The court held that consolidation and annexation are matters of statewide concern. At page 350 the court set forth the broad scope of the legislature's power in these areas:

"The legislature is prohibited by sec. 31, art. IV of the Wisconsin constitution from enacting any special or private law regarding the incorporation of a town, city, or village. There is no constitutional limitation prohibiting the legislature from creating, enlarging, diminishing, or abolishing towns. Nor is there any constitutional restriction as to the legislature's authorization of the consolidation of cities, towns, and villages. Clearly such matters are entirely within the realm of the legislature's power and discretion."

In *Village of West Milwaukee v. Area Bd. of V. T. & A. Ed.* (1971), 51 Wis. 2d 356, 373-375, 187 N.W. 2d 387, it

## **JOURNAL OF THE ASSEMBLY [August 12, 1971]**

was held that the legislature had power to establish rules for the formation and alteration of school districts and could delegate to administrative agencies the authority to exercise such legislative power as necessary to carry into effect the general legislative purpose without the necessity of election or referendum in the areas affected.

I am of the opinion that a statute resulting from enactment of Assembly Bill 64 (1971) would be constitutional insofar as it establishes standards against which all annexations are measured and delegates to a state boundary review board and a city council or village board power to determine whether a proposed annexation under a boundary expansion plan shall become effective, without referendum for approval by electors and landowners in the territory to be annexed.

Sincerely yours,

**ROBERT W. WARREN,**  
Attorney General.

**CAPTION:** The legislature can constitutionally provide for the annexation of territory without referendum for approval by the electors and landowners in the territory to be annexed. Assembly Bill 64 (1971), proposed sec. 66.022, municipal boundary expansion plan.

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### **COMMITTEE REPORTS**

The committee on Agriculture reports and recommends:

#### **Assembly Bill 234**

Relating to unfair discrimination in purchase of dairy products.

Adoption of assembly amendment 1; Ayes, 10; Noes, 1 and without recommendation (Assembly Rule 30); Ayes, 4; Noes, 4; Not Voting, 3.

**DAVID D. O'MALLEY,**  
Chairman.

## **JOURNAL OF THE ASSEMBLY [August 12, 1971]**

The committee on Highways reports and recommends:

### **Assembly Bill 954**

Relating to school zone signs.

Passage; Ayes, 10; Noes, 2.

### **Assembly Bill 955**

Relating to creation of a uniform system of traffic control devices on streets and highways in the state.

Passage; Ayes, 11; Noes, 1.

### **Assembly Bill 956**

Relating to permit issuance fees for vehicles and loads of excessive size and weight.

Indefinite postponement; Ayes, 9; Noes, 3.

### **Assembly Bill 957**

Relating to legal length of vehicles transporting poles and motor vehicles.

Passage; Ayes, 10; Noes, 1; Not Voting, 1.

JOSEPH E. JONES,  
Chairman.

The committee on Insurance and Banking reports and recommends:

### **Senate Bill 277**

Relating to the application of penalties for usury law violations.

Concurrence; Ayes, 8; Noes, 2; Not Voting, 1.

JOHN E. McCORMICK,  
Chairman.

The committee on Labor reports and recommends:

### **Assembly Bill 974**

Relating to leaves of absence for employes elected to the legislature or state constitutional office.

Passage; Ayes, 7; Noes, 1.

**JOURNAL OF THE ASSEMBLY [August 12, 1971]**

**Assembly Bill 1049**

Relating to written work agreements for migrant workers.

Passage; Ayes, 6; Noes, 2.

**Assembly Bill 1119**

Relating to wage rates in municipal public works projects.

Passage; Ayes, 6; Noes, 2.

**WILLIAM A. JOHNSON,**  
Chairman.

The committee on Third Reading reports:

**Assembly Bill 611**

Report correct.

**DENNIS CONTA,**  
Chairman.

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**JOINT SURVEY COMMITTEE ON  
RETIREMENT SYSTEMS**

**Assembly Bill 435**

*It is the feeling of this committee that this bill is not deserving of passage at this time due to an absence of conclusive data covering the subject. Therefore, the committee recommends that the proposal contained in this bill be referred to the Retirement Research Committee for a detailed study.*

To committee on Labor.

**Assembly Bill 1064**

This bill provides a needed clarification of the statutes relating to designation of protective occupation participants and the normal retirement date for the categories of membership under the Wisconsin Retirement Fund. It is the

JOURNAL OF THE ASSEMBLY [August 12, 1971]

opinion of this committee that *passage of Assembly Bill 1064, as amended by assembly amendments 1 and 2, is in the best public interest.*

To calendar.

REUBEN LaFAVE,  
Chairman.

ALVIN BALDUS,  
Vice-Chairman.

Representative Brown asked unanimous consent to be recorded as follows:

Assembly Bill 218, Withdraw from committee on Natural Resources and place on calendar—"No"; Senate Bill 225, Withdraw from committee on Elections—"No"; Assembly Bill 1192, Passage—"Aye"; Assembly Bill 845, Indefinite Postponement—"No"; Assembly Bill 609, Table—"No"; Assembly Bill 611, Engrossment—"Aye"; Assembly Bill 611, Suspension of Rules for Third Reading—"Aye"; Assembly Bill 653, Rejection of assembly substitute amendment 1—"No"; Assembly Bill 653, Indefinite Postponement—"No"; Assembly Bill 653, Table—"No"; Assembly Bill 653, Engrossment—"Aye"; Assembly Bill 675, Adoption of assembly amendment 1—"Aye". Granted.

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Representative Anderson moved that the assembly stand adjourned until 9:30 tomorrow morning.

The question was: Adjournment?  
Motion carried.

The assembly stood adjourned.

9:10 A.M.