

JOURNAL OF THE ASSEMBLY [April 14, 1972]

FRIDAY, April 14, 1972.

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

SPEAKER'S APPOINTMENT

Wisconsin Legislature
Assembly Chamber
Madison 53702
Assembly Speaker

April 7, 1972.

Pursuant to the authority vested in me under Assembly Rule 5 (11), and in compliance with Section 13.56 of the Wisconsin Statutes, I herewith appoint to the Joint Committee for Review of Administrative Rules, the following legislator:

Representative William J. Rogers (Dem.—Outagamie 2nd)

to fill the vacancy created by the resignation of Representative William A. Johnson.

NORMAN C. ANDERSON,
Speaker.

COMMUNICATION

The State of Wisconsin
Department of Justice
Madison

March 7, 1972.

To the Honorable, The Assembly
State Capitol
Madison, Wisconsin 53702

Dear Representatives:

By Assembly Resolution 54 you have asked my opinion on the constitutionality of 1971 Senate Bill 58 in the form in which it was passed by the Senate on February 1, 1972,

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and, in particular, on whether or not 1971 Senate Bill 58 violates the uniformity rule of Art. VIII, sec. 1 of the Wisconsin Constitution.

1971 Senate Bill 58 provides for a different classification and valuation of agricultural land for property tax purposes, and is in violation of the uniformity clause.

The Bill creates subch. VI of ch. 77 relating to the taxation of lands actively devoted to agricultural or horticultural use. Section 77.82 (1), Stats., is created to read:

"77.82 VALUE OF LAND ACTIVELY DEVOTED TO AGRICULTURAL AND HORTICULTURAL USE. (1) VALUATION. (a) For general property tax purposes, the value of land, not less than 10 contiguous acres in area, which is actively devoted to agricultural or horticultural use as defined in s. 77.81 (2) and which has been so devoted for at least the 5 successive years immediately preceding the tax year in issue is the value which the land has for agricultural or horticultural use.

"(b) All structures actively devoted to agricultural or horticultural use, the farmhouse and the land on which they are located shall be assessed and taxed by the same standards, methods and procedures as other taxable structures and other land in the taxing district."

The Bill establishes a valuation for land used for agricultural or horticultural purposes which is not based on "fair market value." For tax purposes, property must be assessed at its "fair market value." *State ex rel. Evansville Mercantile Ass'n. v. City of Evansville* (1957), 1 Wis. 2d 40, 82 N.W. 2d 899. A different standard is acknowledged by the creation of a so-called "Roll-back tax" which is defined under sec. 77.82 (2), Stats., to mean:

"(2) ROLL-BACK TAX. 'Roll-back tax' means the difference, if any, between the tax paid or payable on the basis of the valuation, assessment and taxation authorized under this subchapter and the tax which would have been paid or payable had the land been valued, assessed and taxed in the same manner as other land in the taxing district."

As early as 1859, the Supreme Court determined in *Knowlton v. Supervisors of Rock County*, 9 Wis. *410, that

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the Wisconsin Constitution has fixed one unbending, uniform rule of taxation for the State, and property cannot be classified and taxed by different rules. All kinds of property must be taxed uniformly or be absolutely exempt. Thus, where the City of Janesville included within its limits a large quantity of farming land, which was not within a recorded plat, but provided that land used for agricultural or horticultural purposes would not be subject to the same rate of tax as other lands, the taxes thus levied were determined void in violation of Art. VIII, sec. 1 of the Wisconsin Constitution which provides that "the rule of taxation shall be uniform."

As recently as 1967 the Supreme Court determined in *Gottlieb v. Milwaukee*, 33 Wis. 2d 408, 147 N.W. 2d 633, that the following standards of tax uniformity are required by Art. VIII, sec. 1 of the Wisconsin Constitution:

"1. For direct taxation of property, under the uniformity rule there can be but one constitutional class.

"2. All within that class must be taxed on a basis of equality so far as practicable and all property taxed must bear its burden equally on an *ad valorem* basis.

"3. All property not included in that class must be absolutely exempt from property taxation.

"4. Privilege taxes are no direct taxes on property and are not subject to the uniformity rule.

"5. While there can be no classification of property for different rules or rates of property taxation, the legislature can classify as between property that is to be taxed and that which is to be wholly exempt, and the test of such classification is reasonableness.

"6. There can be variations in the mechanics of property assessment or tax imposition so long as the resulting taxation shall be borne with as nearly as practicable equality on an *ad valorem* basis with other taxable property."

Clearly, 1971 Senate Bill 58 establishes a separate class for property used for agricultural and horticultural purposes within the general class of taxable real property. It departs from the uniform manner of taxing such real property according to its fair market value, and requires such

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land to be valued according to its use. This is in violation of Art. VIII, sec. 1 of the Wisconsin Constitution.

It would appear that the most appropriate way to meet the constitutional difficulties inherent in taxing agricultural land at a different rate is through a constitutional amendment. I call to your attention 1971 Assembly Joint Resolution 1, which has passed this Session of the Legislature. Assembly Joint Resolution 1 is a constitutional amendment proposed for first consideration that would permit the Wisconsin Legislature to provide for the taxation of agricultural and undeveloped land at rates which need not be uniform with each other nor with other real property.

Sincerely yours,

ROBERT W. WARREN,
Attorney General.

CAPTION: 1971 Senate Bill 58, providing for a different classification and valuation of agricultural land for property tax purposes, is in violation of Art. VIII, sec. 1 of the Wisconsin Constitution. 1971 Assembly Joint Resolution 1 discussed.

EXECUTIVE COMMUNICATIONS

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
423 -----	249 -----	April 12, 1972
488 -----	250 -----	April 12, 1972
67 -----	251 -----	April 12, 1972
1140 -----	252 -----	April 12, 1972
1216 -----	253 -----	April 12, 1972
665 -----	261 -----	April 13, 1972

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811 ----- 262 ----- April 13, 1972
1386 ----- 263 ----- April 13, 1972

Sincerely,

MARTIN J. SCHREIBER,
Acting Governor.

MESSAGE FROM THE SENATE

By William P. Nugent, chief clerk.

Mr. Speaker:

I am directed to inform you that the senate has failed to concur in the following assembly joint resolutions pursuant to Senate Joint Resolution 21:

Assembly Joint Resolution 11,
Assembly Joint Resolution 33,
Assembly Joint Resolution 36,
Assembly Joint Resolution 48,
Assembly Joint Resolution 50,
Assembly Joint Resolution 55,
Assembly Joint Resolution 58,
Assembly Joint Resolution 65,
Assembly Joint Resolution 76,
Assembly Joint Resolution 82,
Assembly Joint Resolution 86,
Assembly Joint Resolution 89,
Assembly Joint Resolution 93,
Assembly Joint Resolution 94,
Assembly Joint Resolution 99,
Assembly Joint Resolution 109,
Assembly Joint Resolution 122 and
Assembly Joint Resolution 163.

Failed to concur in the following assembly bills pursuant to Senate Joint Resolution 21:

Assembly Bill 9,	Assembly Bill 43,
Assembly Bill 22,	Assembly Bill 71,
Assembly Bill 26,	Assembly Bill 72,
Assembly Bill 38,	Assembly Bill 103,

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Assembly Bill 117,	Assembly Bill 482,
Assembly Bill 146,	Assembly Bill 491,
Assembly Bill 153,	Assembly Bill 494,
Assembly Bill 161,	Assembly Bill 511,
Assembly Bill 163,	Assembly Bill 520,
Assembly Bill 172,	Assembly Bill 523,
Assembly Bill 174,	Assembly Bill 524,
Assembly Bill 176,	Assembly Bill 544,
Assembly Bill 190,	Assembly Bill 557,
Assembly Bill 197,	Assembly Bill 572,
Assembly Bill 200,	Assembly Bill 573,
Assembly Bill 203,	Assembly Bill 601,
Assembly Bill 204,	Assembly Bill 607,
Assembly Bill 211,	Assembly Bill 610,
Assembly Bill 223,	Assembly Bill 629,
Assembly Bill 239,	Assembly Bill 646,
Assembly Bill 250,	Assembly Bill 655,
Assembly Bill 253,	Assembly Bill 686,
Assembly Bill 256,	Assembly Bill 687,
Assembly Bill 271,	Assembly Bill 690,
Assembly Bill 290,	Assembly Bill 700,
Assembly Bill 314,	Assembly Bill 707,
Assembly Bill 315,	Assembly Bill 742,
Assembly Bill 332,	Assembly Bill 782,
Assembly Bill 361,	Assembly Bill 797,
Assembly Bill 374,	Assembly Bill 809,
Assembly Bill 379,	Assembly Bill 813,
Assembly Bill 381,	Assembly Bill 841,
Assembly Bill 384,	Assembly Bill 856,
Assembly Bill 387,	Assembly Bill 860,
Assembly Bill 406,	Assembly Bill 876,
Assembly Bill 408,	Assembly Bill 878,
Assembly Bill 417,	Assembly Bill 879,
Assembly Bill 432,	Assembly Bill 880,
Assembly Bill 439,	Assembly Bill 906,
Assembly Bill 442,	Assembly Bill 908,
Assembly Bill 445,	Assembly Bill 922,
Assembly Bill 456,	Assembly Bill 948,
Assembly Bill 457,	Assembly Bill 969,
Assembly Bill 463,	Assembly Bill 970,
Assembly Bill 465,	Assembly Bill 1016,
Assembly Bill 467,	Assembly Bill 1051,
Assembly Bill 478,	Assembly Bill 1060,
Assembly Bill 480,	Assembly Bill 1103,

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**Assembly Bill 1104,
Assembly Bill 1109,
Assembly Bill 1125,
Assembly Bill 1135,
Assembly Bill 1136,
Assembly Bill 1137,
Assembly Bill 1154,
Assembly Bill 1169,
Assembly Bill 1209,**

**Assembly Bill 1253,
Assembly Bill 1259,
Assembly Bill 1263,
Assembly Bill 1283,
Assembly Bill 1297,
Assembly Bill 1311,
Assembly Bill 1323 and
Assembly Bill 1358.**

COMMITTEE REPORT

The committee on Enrolled Bills reports:

Assembly Bill 63

Correctly enrolled.

**LLOYD A. BARBEE,
Chairman.**