

JOURNAL OF THE ASSEMBLY (September 26, 1973)

STATE OF WISCONSIN

Assembly Journal

Eighty-First Regular Session

WEDNESDAY, September 26, 1973.

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

AMENDMENTS OFFERED

Assembly amendment 1 to Senate Bill 526 offered by Representative O'Malley.

Assembly amendment 2 to assembly substitute amendment 1 to Assembly Bill 436 offered by Representative Barczak.

Assembly substitute amendment 2 to Assembly Bill 738 offered by Representatives Berger, Jackamonis and Schneider.

Assembly substitute amendment 1 to Assembly Bill 1266 offered by Representative Rutkowski.

Assembly substitute amendment 1 to Assembly Bill 1181 offered by Representatives Jackamonis, Berger, Mielke, Earl and Flintrop.

Assembly substitute amendment 1 to Assembly Bill 440 offered by Representative Earl.

Assembly amendment 1 to Assembly Bill 1091 offered by Representative Flintrop.

Assembly amendment 1 to Assembly Bill 1103 offered by Representative Wahner.

Assembly amendment 2 to Assembly Bill 1103 offered by Representative Wahner.

Assembly amendment 2 to Assembly Bill 882 offered by Representative O'Malley, by request of Senator Chilsen.

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Assembly amendment 1 to **Assembly Bill 1265** offered by Representatives Kleczka and Schroeder.

Assembly amendment 2 to **Assembly Bill 1265** offered by Representatives Conta, Sensenbrenner, Kleczka and Niebler.

Assembly amendment 3 to **Assembly Bill 541** offered by Representative Earl.

Assembly amendment 1 to **Assembly Bill 1117** offered by Representative Thompson.

Assembly amendment 1 to assembly substitute amendment 1 to **Assembly Bill 1016** offered by Representative Nager.

Assembly amendment 2 to assembly substitute amendment 1 to **Assembly Bill 1016** offered by Representative Nager.

INTRODUCTION AND REFERENCE OF RESOLUTIONS

Read and referred:

Assembly Joint Resolution 106

Relating to a study by the joint committee on finance of home loan interest rates and variable interest mortgages for the purpose of developing legislation to protect the consumer.

By Representatives TOBIASZ and BERGER.

To committee on Finance.

INTRODUCTION AND REFERENCE OF BILLS

Read first time and referred:

Assembly Bill 1274

Relating to requiring legislative authorization for major policy changes affecting the university of Wisconsin system.

By Representative MURRAY.

To committee on State Affairs.

Assembly Bill 1275

Relating to authorized investments of the Milwaukee debt amortization fund.

By Representative TOBIASZ, by request of the City of Milwaukee.

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To joint committee on Finance.

Assembly Bill 1276

Relating to payment of losses on public deposits, and making an appropriation.

By Representative TOBIASZ, by request of the City of Milwaukee.

To joint committee on Finance.

Assembly Bill 1277

AN ACT to authorize the filling of certain lands beneath the waters of the East Twin river for construction of a bulkhead.

By Representatives BOLLE, LALLENSACK and MITTNESS; co-sponsored by Senators MARTIN and KRUEGER, by request of the city of Two Rivers.

To committee on Natural Resources.

Assembly Bill 1278

Relating to multiple-party and agency accounts.

By Representatives SICULA and THOMPSON, by request of Real Property Section of State Bar of Wisconsin.

To committee on Insurance and Banking.

Assembly Bill 1279

Relating to procedure for cigarette permits' transfer from old to new addresses.

By Representative ROBERTS.

To committee on Excise and Fees.

PETITIONS

Assembly Petition 119

By Representative SWOBODA.

To committee on Transportation.

Assembly Petition 120

By Representative SWOBODA.

To committee on Natural Resources.

Assembly Petition 121

By Representative KEDROWSKI.

To committee on Environmental Quality.

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COMMUNICATIONS

**Department of State
Madison, Wisconsin 53702**

September 26, 1973

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. No.	Chapter No.	Publication date
Assembly Bill 223 -----	120 -----	September 25, 1973

**Respectfully submitted,
ROBERT C. ZIMMERMAN,
Secretary of State.**

**The State of Wisconsin
Department of Justice
Madison 53702**

September 26, 1973

**The Honorable, The Assembly
State Capitol
Madison 53702**

Gentlemen:

Prior to June 29, 1973, you passed, and the Senate concurred in, a bill relating to retail liquor licensing for beer bars. The bill was approved by the Governor and subsequently became law on June 29 as Chapter 48, Laws of 1973.

On the same day--with the law already effective--you passed Assembly Resolution 30 requesting an opinion on the constitutionality of the same law. I received the request on July 3, 1973.

The two houses of the Legislature are among our chief clients, and the advice we can render on pending legislation is one of our most important functions. To ask whether a law will be constitutional, if passed, is an entirely appropriate legislative concern. But to ask if a

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law is constitutional after it has been passed and has become law places this office in a position where we are requested to proceed counter to a number of long-standing policies and ethical considerations:

(1) Once a bill becomes statute, there is a presumption of constitutionality attached to it.

(2) As a matter of policy, we do not answer hypothetical queries on constitutionality. To ask about constitutionality after the Legislature has made its judgment, and before any case or controversy has been brought to court, is to render the inquiry meaningless.

(3) If, in fact, a case or controversy has been presented to a court raising the question of constitutionality, then that issue should be settled by the judicial tribune which has the power to enforce its decision.

There is presently pending a legal action in Circuit Court for the sole purpose of testing the constitutionality of Chapter 48, Laws of 1973. It is my duty, because of (1) above, to defend this act of the Legislature, Chicago and N. W. Ry. Co. v. LaFollette, (1965) 27 Wis. 2d 505, 35 N.W. 2d 269. I have already undertaken to appear and so defend, pursuant to Section 269.56, Stats., in order to discharge my duties as Attorney General.

For those reasons it would be inappropriate for me to address the constitutionality of Chapter 48 and render an opinion thereon to you while at the same time committed to an advocacy position in court on the same issue. Assuming that the issues are properly framed in the current litigation, the Court's decision should make your request for an opinion moot.

Sincerely yours,

ROBERT W. WARREN,

Attorney General

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EXECUTIVE COMMUNICATIONS

**State of Wisconsin
Office of the Governor
Madison 53702**

September 24, 1973

**Mr. Thomas Hanson
Assembly Chief Clerk
220 West, State Capitol
Madison 53702**

**Mr. William P. Nugent
Senate Chief Clerk
243 South, State Capitol
Madison 53702**

Dear Sirs:

I respectfully request permission to address a joint session of the State Legislature on Wednesday, October 3, 1973, at 10:30 a.m.

**Sincerely,
PATRICK J. LUCEY,
Governor.**

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
664	121	September 26, 1973

**Sincerely,
PATRICK J. LUCEY,
Governor.**