

JOURNAL OF THE SENATE (January 24, 1973)

STATE OF WISCONSIN

Senate Journal

Eighty-First Regular Session

WEDNESDAY, January 24, 1973.

9:00 A.M.

The senate met.

The senate was called to order by the President Pro Tempore of the senate.

Prayer was offered by the Reverend Richard E. Pritchard, Pastor of Heritage Congregational Church of Madison.

President in the chair.

9:05 A.M.

The roll was called and the following senators answered to their names:

Senators Bablitch, Bidwell, Chilsen, Devitt, Dorman, Flynn, Frank, Hollander, Johnson, Kasten, Keppler, Knowles, Knutson, Krueger, LaFave, LaFollette, Lorge, McKenna, Martin, Murphy, Parys, Peloquin, Risser, Roseleip, Schuele, Steinhilber, Swan J.D., Swan M., Theno, Thompson and Whittow -- 31.

Absent -- None.

Absent with leave -- Senators Kendziorski and Petri -- 2.

INTRODUCTION OF RESOLUTIONS

Senate Joint Resolution 16

Directing an advisory referendum on state aid to parents of private and parochial school children.

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By Senators Murphy, J. D. Swan, Dorman, LaFollette, and Keppler, cosponsored by Representatives DeLong, and Gower.

Read and referred to committee on Health, Education and Welfare.

Senate Joint Resolution 17

To amend article IV, section 24 of the constitution relating to raffle games (1st consideration).

By Senators Keppler, Parys, Schuele and Devitt.

Read and referred to committee on Governmental and Veterans' Affairs.

BILLS INTRODUCED

Read first time and referred:

Senate Bill 85

Relating to right turns at intersections after stopping and yielding the right-of-way and providing a penalty.

By Senators Theno, Knowles, Devitt, Kasten, Hollander, McKenna, Knutson, LaFave, and Parys.

To committee on Transportation.

Senate Bill 86

Relating to establishing a procedure for informal administration of estates.

By Senators Risser, Schuele, Whittow, Dorman, Bablitch, and M. Swan, cosponsored by Representative Berger, by request of Governor Patrick J. Lucey.

To committee on Judiciary and Insurance.

Senate Bill 87

Relating to mandatory imprisonment for homicide by negligent or intoxicated use of a vehicle or weapon.

By Senators Murphy, Theno, Knutson, and Roseleip, cosponsored by Representatives Alberts, Gower, and Giese.

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To committee on Judiciary and Insurance.

Senate Bill 88

Relating to allowing the prosecution to request the substitution of a judge.

By Senators Murphy, Knutson, J. D. Swan, Steinhilber, Kasten, Keppler, Roseleip, and Risser, cosponsored by Representatives Alberts, Gower, Thompson, and Cyrak.

To committee on Judiciary and Insurance.

Senate Bill 89

Relating to examining local uniform traffic accident reports.

By Senators Murphy, Theno, Kasten, Steinhilber, Devitt, Petri, Lorge, Dorman, LaFollette, Keppler, Roseleip, Frank, Risser, and Thompson, cosponsored by Representatives Niebler, Giese, Alberts, DeLong, Gower, Thompson, and Cyrak.

To committee on Judiciary and Insurance.

Senate Bill 90

Relating to a limitation on parental liability for his child's negligence in operating a motor vehicle.

By Senators Murphy, Theno, Devitt, Dorman, Schuele, Roseleip, Johnson, Risser, and Thompson, cosponsored by Representative Gower.

To committee on Judiciary and Insurance.

Senate Bill 91

Relating to settlements and advance payments of claims for damages.

By Senators Murphy, Knutson, Steinhilber, Devitt, Dorman, Keppler, Risser, and Thompson, cosponsored by Representative Gower.

To committee on Judiciary and Insurance.

Senate Bill 92

Relating to property exempt from seizure or sale on execution.

By Senators Murphy, Dorman, McKenna, Keppler, Roseleip, Frank, and Risser, cosponsored by Representative Gower.

To committee on Judiciary and Insurance.

Senate Bill 93

Relating to the witnesses rights to have an attorney present.

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By Senators Murphy, Theno, Devitt, Lorge, Dorman, Flynn, Parys, LaFollette, M. Swan, and Thompson, cosponsored by Representatives Alberts and Thompson.

To committee on Judiciary and Insurance.

Senate Bill 94

To provide procedures for identification of a defendant.

By Senators Murphy, J. D. Swan, Kasten, and Keppler.

To committee on Judiciary and Insurance.

Senate Bill 95

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

By Senators Chilsen, Keppler, Devitt, and Knowles, cosponsored by Representatives Giese, Porter, Cyrak, Alberts, Lewis, Lewison, Berger, O'Malley, and Schneider.

To committee on Judiciary and Insurance.

Senate Bill 96

Relating to creating a council on physician's assistants, requiring certification of physician's assistants and granting rule-making authority.

By Senators Chilsen, Knowles, Murphy, Devitt, Lorge, Dorman, M. Swan, Theno, Krueger, Keppler, Kasten, Bablitch, McKenna, Frank, Hollander, Bidwell, Steinhilber, Whittow, and Parys, cosponsored by Representatives Thompson, Wilcox, Klicka, Tregoning Schroeder, Giese, Alberts, Porter, Day, Lewison, Baldus, Jackamonis, Berger, O'Malley, Vanderperren, and Dueholm.

To committee on Health, Education and Welfare.

Senate Bill 97

Relating to resident tuition and fee exemptions in the University of Wisconsin and vocational, technical and adult education systems for wives and children of missing soldiers and prisoners of war.

By Senators Chilsen, Knowles, Bidwell, and Lorge.

To committee on Health, Education and Welfare.

COMMITTEE REPORTS

The committee on Judiciary and Insurance reports and recommends for introduction:

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Senate Bill 98

Relating to traffic court procedures, substitution of judges, jury trials, the standard of proof in traffic regulation cases and providing penalties.

Introduction; Ayes, 5; Noes, 0.

Read first time and referred to committee on Judiciary and Insurance.

Senate Bill 99

Relating to a revision of juvenile court procedure and jurisdiction and providing penalties.

Introduction; Ayes, 5; Noes, 0.

Read first time and referred to committee on Judiciary and Insurance.

Senate Bill 100

Relating to 6-man jury trials in certain criminal cases.

Introduction; Ayes, 5; Noes, 0.

Read first time and referred to committee on Judiciary and Insurance.

Senate Bill 101

Relating to juries of not more than 6 person in small claims actions.

Introduction; Ayes, 5; Noes, 0.

Read first time and referred to committee on Judiciary and Insurance.

Senate Bill 102

Relating to abolishing jury trials in certain traffic cases and certain forfeiture actions.

Introduction; Ayes, 5; Noes, 0.

Read first time and referred to committee on Judiciary and Insurance.

Senate Bill 103

Relating to the size of major committees of the boards of directors of insurance corporations.

Introduction; Ayes, 5; Noes, 0.

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Read first time and referred to committee on Judiciary and Insurance.

PETITIONS AND COMMUNICATIONS

Senate Petition 8

A Petition in the form of a Resolution adopted by the County Board of Supervisors of Manitowoc County requesting full licensed operation of the Point Beach and Carlton Nuclear Power Plants.

By Senator Martin

Read and referred to Committee on Industry, Labor, Taxation and Banking.

Senate Petition 9

A petition from 48 teachers at Memorial High School in Eau Claire in support of Senate Bill 45, to lower the age of compulsory school attendance from 18 to 16.

By Senator Steinhilber

Read and referred to Committee on Health, Education and Welfare.

RULING OF THE CHAIR

State of Wisconsin
Office of the Lieutenant Governor

January 24, 1973

To the Honorable Senate:

Since the beginning of this legislative session allegations have been made by the leadership of the Republican caucus of the Wisconsin State Senate that during the 1971 legislative session I abused my rights to rule on points of order to the consistent advantage of members of my own party.

During the 1971 legislative session, 125 points of order were raised by members of both parties. Of those 125 points of order ruled upon by me, 32 were appealed and out of those 32 appeals only nine times was the chair not upheld by the Senate. It is important to remember that during this time the majority party had a 20-13 margin which put a simple majority within easy reach, should it have been determined that these rulings were not based

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on an impartial decision. Being overruled nine out of 125 times means that the Senate body concurred in my rulings 92.8% of the time.

Examining the Senate Journal of the 1971 legislative session you will find that in nearly one-half the cases (9 of 19), in which points of order were taken under advisement and rulings were subsequently forthcoming, those rulings were made either on the same day or on the next succeeding day. The average length of time that a point of order was taken under advisement was 2.7 days or just over half the time currently permitted under the rules adopted by the Republican controlled Senate in 1969.

It should be noted that it is not always in the best interest of the Senate for the chair to make an immediate decision. One will find that, for example, the chair took seven legislative days to rule on a point of order raised by Senator Knowles, that point of order being that senators may not explain their votes during a roll call on a nondebatable motion. Ajudication of this question required not only that I examine precedent but also that I discuss the matter individually with senators to allow them to fully express their individual feelings prior to ruling. This ruling was not appealed.

Another point of order requiring deliberation was raised by Senator Risser to the effect that a resolution calling for an Attorney General's ruling was not privileged. The chair ruled against Senator Risser. These and other points of order highlight the fact that if the body is to operate effectively, fairly and democratically it will occasionally be necessary for the chair to take the time for essential research before ruling. That this privilege is not being abused is clear from the statistic that only thirty times out of 125 points of order was a point of order taken under advisement.

On 52 occasions the chair ruled a point of order not well taken. In order to substantiate the charge that the President of the Senate is unfair to the detriment of the opposition party it should be shown that the overwhelming majority of unfavorable decisions by the chair were decided against the opposition party. A careful review of the Senate Journal indicates that in 52 rulings against a senator raising the point of order, 28 were against members of the majority party while 24 were decided against the minority party. This is as close to impartiality as is possible in view of the fact that the majority party maintained a 20 to 13 margin in membership.

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The Constitution clearly provides that the Lieutenant Governor shall be the President of the Senate. The history of my exercise of that authority indicates that basic fairness has prevailed.

I wish to emphasize that I will continue to exercise that basic fairness in all matters before the Senate. Only when the majority party abuses its responsibility will it be dissatisfied with the manner and method in which I fulfill my responsibilities in presiding over the Senate of the State of Wisconsin.

Yours very truly
MARTIN J. SCHREIBER
President of the Senate

By request of Senator Johnson, with unanimous consent, the communication from the President of the Senate was spread upon the Journal.

MESSAGE FROM THE ASSEMBLY

By Thomas S. Hanson, chief clerk.

Mr. President:

I am directed to inform you that the assembly has adopted and asks concurrence in:

Motion Under Joint Rule 26:

A Joint Certificate of Congratulations by Representatives Porter, DeLong, and Olson; cosponsored by Senator J. D. Swan for The Lake Geneva Regional News on its 100th Anniversary.

and

Assembly Joint Resolution 19

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MESSAGE FROM THE ASSEMBLY CONSIDERED

Motion Under Joint Rule 26:

A Joint Certificate of Congratulations by Representatives Porter, DeLong, and Olson; cosponsored by Senator J. D. Swan for The Lake Geneva Regional News on its 100th Anniversary.

Read and concurred in.

Assembly Joint Resolution 19

Relating to the life and public service of President Lyndon Baines Johnson.

By Representative EARL.

Read and concurred in by unanimous rising vote.

MOTIONS UNDER JOINT RULE 26

The State of Wisconsin * * * Citation by the Legislature

Know you by these presents:

Whereas, Otto Mueller, a native of Wausau, Wisconsin, passed away on January 9, 1973 at the age of 98; and

Whereas, Mr. Mueller, a Republican, was a former member of the legislature, serving in the senate from 1927 to 1934 and from 1939 to 1942; and

Whereas, he represented the people of Lincoln and Marathon counties with distinction serving as chairman of the joint committee on Finance and also as a trustee of the Mt. View Tuberculosis Sanatorium for many years; and

Whereas, the legislature is deeply saddened to learn of the death of Mr. Mueller and in recognition of his life and public service: now,

Therefore, the members of the Wisconsin Legislature, on the motion of Senators Keppler and Chilsen extend their sincere condolences to the Mueller family.

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Read and adopted.

The State of Wisconsin * * * Citation by the Legislature

Know you by these presents:

Whereas, with the passing of Julian "Josh" P. Bradbury, the Wisconsin Legislature has lost one of its most valued servants; and,

Whereas, his legal skills as a bill drafting attorney were backed by a unique command of language developed over long years as a newspaper editor; and,

Whereas, his zest for life was enhanced by a winsome and clever sense of humor, which often brightened the days of those who came in contact with Josh; and,

Whereas, Julian P. Bradbury was born in Fennimore in 1922; and,

Whereas, he interrupted his university education to serve for 32 months in the Army during World War II; then received his bachelor's degree in Journalism in 1946; and in his 10 years as a newspaperman, 3 years were spent as a Washington correspondent for the Omaha WORLD-HERALD, and much of the remainder as editor of his own small town paper; and,

Whereas, Mr. Bradbury received his law degree from the University of Wisconsin in 1958; and as an attorney, he served as the permanent draftsman of the Wisconsin Legislature from 1958 until 1960, spent 7 years as a research attorney employed by the League of Wisconsin Municipalities, and returned to the Legislative Reference Bureau in October 1967 as the bureau's senior draftsman; and,

Whereas, in view of the loyal and competent service of Julian P. Bradbury to the Legislature and to the people of Wisconsin; now,

Therefore, the members of the Wisconsin Legislature, on the motion of Speaker of the Assembly, Norman C. Anderson and President pro Tempore of the Senate Robert P. Knowles extend their sincere condolences to Mrs. Miriam E. Bradbury.

Read and adopted.

By request of Senator Schuele, with unanimous consent, the senate recessed for 10 minutes.

10:50 A.M.

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RECESS

11:00 P.M.

The senate reconvened.

By request of Senator Krueger, with unanimous consent, the Senate returned to the fourth order of business.

BILLS INTRODUCED

Read first time and referred:

Senate Bill 104

Relating to classification of users under the Milwaukee metropolitan sewerage commission.

By Senator Frank, cosponsored by Representative Atkinson.

To committee on Governmental and Veterans' Affairs.

Senate Bill 105

Relating to firearm safety training.

By Senators Krueger, Theno and Petri, cosponsored by Representative Alberts.

To committee on Natural Resources.

RULING OF THE CHAIR

On Tuesday, January 16, 1973, following the calling of the senate to order at 2:00 o'clock p.m., **Senate Resolution 7**, consisting of 53 pages, was introduced to the Senate by Senators Johnson and Knowles. **Senate Resolution 7**, relating to adopting the rules of the Senate, as observed at the conclusion of the 1971 regular session of the senate, with the modifications indicated, as the rules of the 1973 Wisconsin Senate.

Following the introduction of **Senate Resolution 7** relating to rule changes, Senator Johnson moved that **Senate Resolution 7** be made a special order of business at 10:15 a.m. on January 17, 1973.

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Senator Risser raised the point of order that because **Senate Resolution 7** changed the rules of the Senate, it should lay over. The chair took the point of order under advisement.

The analysis by the Legislative Reference Bureau of **Senate Resolution 7** as submitted by Senators Johnson and Knowles sets forth "the rules of the Wisconsin Senate were last adopted by the Senate in 1969. During the 1971 regular session, the Senate rules were observed and Senate Rule 41 (1) was specifically amended by 1971 **Senate Resolution 13**, but no formal action was taken to adopt the Senate rules.

"The resolution provides for the formal adoption of the Senate rules by the 1973 Wisconsin Senate. Many rules are continued; i.e. adopted in the form in which they were observed at the conclusion of the 1971 regular session. A few rules are new, and several others are amended based on the text observed in 1971.

This analysis of the proposed rule changes as supplied by the Legislative Reference Bureau and submitted by Senators Johnson and Knowles clearly sets forth the position of the Senators as what, in fact, the situation was when no new rules were adopted for the 1971 legislative session -- that situation being that the Senate would continue to operate under the "old" rules until new rules were adopted.

It is difficult to dispute the analysis of the Legislative Reference Bureau as submitted by Senators Johnson and Knowles that the 1969 rules carried over in force and effect in the 1971 session until new rules were adopted. Upon any organization of the legislative session there must and should be rules to establish method, procedure, and decorum to allow the legislative body to function. Based on precedence, then, the rules of the last legislative session would therefore be in full force and effect until new rules are created or old rules amended. Should this not be the case, and should any Senator have not thought this to be the case, he would have been heard to object to the following of the orders of business, to the introduction of legislation, to the introduction of resolutions, to the very seating of the Senate body itself.

Under each and every rule change which governs the operation of a legislative body, all members of that legislative body have a right to be fully appraised of the content and results of any general or specific rule change. It is with this basic theory that Senate Rule 89 dealing with creating, amending, or repealing, rules was adopted by the members of the 1969 Wisconsin Senate.

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That rule clearly sets forth, and I quote, "(1) Senate rules may be created, ammended, or repealed by resolution. Any such resolution shall set forth the precise detail of the proposed creation, ammendment, or repeal. Any such resolution shall lay over one week."

The ruling of the chair, therefore, on the point of order raised by Senator Risser is well taken as there can be no dispute in the precise, clear language of Senate Rule 89 -- "any such resolution shall lay over one week."

Senator Johnson asked, with unanimous consent, to consider **Senate Resolution 7** for action at this time.

Senator Risser objected.

Senator Johnson moved that **Senate Resolution 7** be made a special order of business at 11:15 A.M.

Senator McKenna raised the point of order that **Senate Resolution 7** was not before the Senate as it had not laid over for 7 days.

The chair ruled the point of order not well taken.

Senate Resolution 7

Relating to adopting the rules of the senate, as observed at the conclusion of the 1971 regular session of the senate, as the rules of the 1973 Wisconsin senate.

Read.

Senate substitute amendment 1 to Senate Resolution 7

Resolved by the senate, That the rules observed at the conclusion of the 1971 regular session of the senate--consisting of the senate rules adopted by 1969 Senate Resolution 16, as modified by 1969 Senate Resolution 10 and 1971 Senate Resolution 13--be and they are hereby adopted as the rules of the 1973 Wisconsin Senate.

Offered by Senators McKenna and Peloquin.

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Senator Chilsen asked unanimous consent to consider senate substitute amendment 1 to **Senate Resolution 7** for action at this time.

Senator McKenna objected.

Senator McKenna moved that senate substitute amendment 1 to **Senate Resolution 7** be considered for action at this time.

The ayes and noes were required and the vote was: ayes, 17; noes, 14; absent or not voting, 2; as follows:

Ayes -- Senators Bidwell, Chilsen, Devitt, Hollander, Johnson, Kasten, Keppler, Knowles, Knutson, Krueger, LaFave, Lorge, Murphy, Roseleip, Steinhilber, Swan J.D. and Theno -- 17.

Noes -- Senators Bablitch, Dorman, Flynn, Frank, LaFollette, McKenna, Martin, Parys, Peloquin, Risser, Schuele, Swan M., Thompson and Whittow -- 14.

Absent or not voting -- Senators Kendziorski and Petri -- 2.

Less than two-thirds having voted in the affirmative, the motion did not prevail.

Senator Johnson raised the point of order that pursuant to Senate Rule 69 **Senate Resolution 7** would not lay over.

The chair did not rule on the point of order.

Senator Johnson asked unanimous consent that **Senate Resolution 7** be made a special order of business at 9:00 A.M. on Thursday, January 25.

By request of Senator Risser, with unanimous consent, the Senate recessed until 12:05 P.M.

11:55 A.M.

RECESS

12:05 P.M.

The senate reconvened.

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By request of Senator Johnson, with unanimous consent, the Senate returned to the third order of business.

INTRODUCTION OF RESOLUTIONS

Senate Joint Resolution 18

Commending President Nixon for concluding the conflict in Vietnam.

By Senators Roseleip, Murphy, Steinhilber, Johnson, Lorge and Knutson, cosponsored by Representatives Bruhy, McEssy, Roth, Giese, Lewison, Sensenbrenner, DeLong, Lewis, Ellis, Conradt, Luckhardt, Byers, Matty, Kincaid, Porter, Rohner, Bradley, Schricker, Schroeder, Shabaz, Wilcox, Wackett, Alberts, Thompson, Opitz, Gower, Gibson, and Cyrak.

Read.

By request of Senator Roseleip, with unanimous consent, **Senate Joint Resolution 18** was considered for action at this time.

Senate amendment 1 offered by Senators Bablitch and McKenna.

Senator LaFave moved rejection.

Senator Chilsen raised the point of order that amendment 1 was not germane to **Senate Joint Resolution 18**.

The chair took the point of order under advisement.

Upon motion of Senator Johnson the senate adjourned until 9:00 A.M. Thursday, January 25.

12:30 P.M.

INTRODUCTION OF GUESTS

Senator Steinhilber introduced students, parents, and teachers of the Tullar School of Neenah, Wisconsin.

Senator Kasten introduced 35 students of Washington High School with their instructor Mr. John Roso, of Germantown, Wisconsin.

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Senator Krueger introduced Assemblyman Willis Hutnik, former representative from Ladysmith, Wisconsin.

Senator Lorge introduced Professor Walter Wendland and 30 students of the Junior and Senior classes of Clintonville High School, who are studying Political Science and Economics.