

STATE OF WISCONSIN
Senate Journal
Eighty-Third Regular Session

WEDNESDAY, June 29, 1977.

10:00 A.M.

The senate met.

The senate was called to order by Fred A. Risser, president pro tempore of the senate.

The senate stood for the prayer which was offered by Father Daryl Furlong, Director of the Office of Marriage and Family Life of the Diocese of Madison.

The senate remained standing and Senator Adelman led the senate in the pledge of allegiance to the flag of the United States of America.

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

Senators Adelman, Bablitch, Berger, Bidwell, Braun, Chilsen, Cullen, Dorman, Flynn, Frank, Goyke, Harnisch, Keppler, Kleczka, Krueger, McKenna, Lasec, Lorge, McCallum, Maurer, Morrison, Murphy, Offner, Parys, Peloquin, Petri, Radosevich, Risser, Sensenbrenner, Swan, Theno, Thompson and Van Sistine -- 33.

Absent -- None.

Absent with leave -- None.

INTRODUCTION OF RESOLUTIONS

Senate Joint Resolution 43

Relating to the life and public service of James Swan.

By the Entire membership of the Senate; cosponsored by the Entire Membership of the Assembly.

Read.

Considered as privileged.

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Adopted by unanimous rising vote.

PETITIONS AND COMMUNICATIONS

**State of Wisconsin
Claims Board**

June 28, 1977

**Don Schneider
Senate Chief Clerk
State Capitol
Madison, Wisconsin 53702**

Dear Mr. Schneider:

Enclosed is the report of the State Claims Board covering claims heard on April 25, 1977.

The amounts recommended for payment under \$1000 on claims included in this report have, under the provisions of s. 16.007, Wisconsin Statutes, been paid directly by the Board.

The Board is preparing the bill(s) on the recommended award(s) over \$1,000, and will submit such to the Joint Finance Committee for legislative introduction.

This report is for the information of the Legislature. The Board would appreciate your acceptance and spreading of it upon the Journal to inform the members of the Legislature.

Sincerely,
EDWARD D. MAIN
Secretary

**BEFORE THE
CLAIMS BOARD OF WISCONSIN**

The Claims Board conducted hearings at the State Capitol Building, Madison, Wisconsin, on April 25, 1977, upon the following claims:

The Claims Board conducted a hearing at the State Capitol Building, Madison, Wisconsin, on April 25, 1977, on the claim of Owen Neal Lambert in the amount of \$32,000 as compensation for wrongful imprisonment under sec. 285.05, Stats. Claimant appeared in person and by his attorney, Thomas D. Kuehl, and the

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Department of Health and Social Services appeared by its attorney, David Whitcomb. Briefs have been filed.

The claimant was convicted on August 3, 1971, of committing an abortion by the introduction of a catheter into the vagina of a mother causing the death of the mother in violation of sec. 940.04 (2) (b), Stats., and sentenced to a term of ten (10) years in the state prison at Waupun. Subsequently, on January 22, 1973, the United States Supreme Court decided *Roe v. Wade*, 410 U.S. 113 (1973), which held that both the Texas and Georgia abortion statutes were unconstitutional. As a result claimant's conviction was set aside on March 2, 1973, by the Milwaukee County Circuit Court on the grounds that sec. 940.04(2)(b), Stats., was unconstitutional and void under the majority view of said *Roe v. Wade* decision, and claimant was released from prison. Claimant seeks compensation for wrongful imprisonment for a period of approximately eighteen (18) months.

THE BOARD FINDS:

Claimant also offered testimony to the effect that he did not commit the abortion leading to his conviction, which testimony this Board finds incredible. On the basis of the evidence before this Board, the Board finds that it is not clear beyond a reasonable doubt within the meaning of sec. 285.05, Stats., that claimant was innocent of the crime for which he was imprisoned.

Claimant's main contention for relief, however, is based upon the grounds that the statute under which he was convicted was unconstitutional, and therefore of no force and effect from the date of its enactment.

If, under such a rationale, there would be no statute in effect governing claimant's conduct, it is the Board's conclusion that there also would be no basis for relief under sec. 285.05, Stats., "for the relief of innocent persons who have been convicted of a *crime*." (Emphasis added.) The Board would not be in a position to make a finding that the claimant "was innocent of the *crime* for which he suffered imprisonment," because there would be no crime, and in the absence of a crime there would be no basis for relief under the statute. (Emphasis added.) The Board would not extend the clear meaning of the words of the statute to provide relief under these circumstances.

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THE BOARD CONCLUDES:

However, the Board concludes that at the time of his conviction there was a crime, and the Board finds that it is not clear beyond a reasonable doubt that claimant was innocent of the crime for which he suffered imprisonment so as to entitle him to relief within the meaning of sec. 285.05, Stats.

Although the order of the circuit court was the basis for releasing the claimant from prison, this Board concludes it is not the basis for a finding of innocence beyond a reasonable doubt under sec. 285.05, Stats. If the Legislature had intended to compensate persons under the circumstances of this case, more specific legislation would be required to allow such a result.

Dated at Madison, Wisconsin, this 21st day of June, 1977.

GERALD D. KLECZKA
Senate Finance Committee

VIRGIL D. ROBERTS
Assembly Finance Committee

EDWARD M. PARSONS
Representative of Governor

EDWARD D. MAIN
Representative of Secretary of
Administration

ALLAN P. HUBBARD
Representative of Attorney
General

State of Wisconsin
Claims Board

June 28, 1977

Don Schneider
Senate Chief Clerk
State Capitol
Madison, Wisconsin 53702

Dear Mr. Schneider:

Enclosed is the report of the State Claims Board covering claims heard on August 19, 1975.

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The amounts recommended for payment under \$1000 on claims included in this report have, under the provisions of s. 16.007, Wisconsin Statutes, been paid directly by the Board.

The Board is preparing the bill(s) on the recommended award(s) over \$1,000, and will submit such to the Joint Finance Committee for legislative introduction.

This report is for the information of the Legislature. The Board would appreciate your acceptance and spreading of it upon the Journal to inform the members of the Legislature.

Sincerely,
EDWARD D. MAIN
Secretary

**BEFORE THE
CLAIMS BOARD OF WISCONSIN**

The Claims Board conducted hearings at the State Capitol Building, Madison, Wisconsin, on August 19, 1975, upon the following claims:

In Re: *The Claim of Gerald Pate*
2821 North Eighth Street
Milwaukee, Wisconsin

A hearing was held before the Claims Board on August 19, 1975, at which the claimant, Gerald Pate, claimed compensation under sec. 285.05, Stats., for a 34-month period of imprisonment served as a result of his conviction for an armed robbery committed on November 14, 1968, of a service station in Milwaukee.

The supreme court exercised its discretion under sec. 251.09, Stats., to reverse his conviction in the interest of justice and grant a new trial. *Pate v. State*, 61 Wis.2d 25, 211 N.W.2d 495 (1973). No new trial was ever scheduled.

At the hearing of August 19, 1975, the claimant and four of his witnesses testified in an effort to establish 1) that he had an alibi that covered the time period during which the armed robbery occurred and 2) that three other men actually committed the armed robbery for which he was convicted.

Subsequent to that hearing the Claims Board ruled that such testimony was not competent evidence to support a claim under sec. 285.05, Stats., because it was not evidence which had been discovered or had arisen since the claimant's conviction.

Upon review by the circuit court, the circuit court ruled that evidence presented to the Claims Board is not incompetent merely because it is cumulative to evidence presented at trial. However, the circuit court also ruled that the Claims Board cannot ground its finding of innocence beyond a reasonable doubt under subsec. (3) of sec. 285.05, Stats., upon evidence known to the claimant at the time of his trial, saying:

“However, ascribing the clear and accepted meaning to these statutory words would require the Board not to ground the finding it made under sub. (3) of sec. 285.05 upon evidence known to Pate at time of trial. This would require the Board to exclude from consideration the alibi testimony of Jackson and Henderson, and the testimony of Pate with respect to what he observed and was told at Stinson’s home on the day of the robbery.

“There is no evidence that Pate personally knew prior to the conclusion of his criminal trial which ended with the judgment of conviction entered October 16, 1969, of the facts which Stinson testified before the Board occurred in connection with his driving Whitlow and Walker to the scene of the robbery and then driving them away after the robbery with the money stolen, and that Whitlow and Walker then had pistols and a mask.”

Cesar Stinson testified at the first hearing before this Board that he and two other men, Leroy Whitlow and Ray Walker, committed the armed robbery for which the claimant was convicted. Judge Currie indicated in his written decision, that if Stinson’s testimony was believed, it could provide a basis for a finding that the claimant was innocent of the crime beyond a reasonable doubt. Judge Currie’s conclusion was prefaced by his observation that there was no evidence that the claimant personally knew prior to the conclusion of his criminal trial of the facts which Stinson presented to the Board at the time of the first hearing. However, the claimant stated in his testimony at the second hearing on April 25, 1977, that Stinson told him of his involvement with Whitlow and Walker in the armed robbery prior to his criminal trial, saying among other things:

p. 26 ‘Q. And did Stinson ever tell you prior to the trial that he had committed the armed robbery?

“A. Yes, I recall now that he did.

” * * *

p. 28 ‘Q. Did you tell Mr. Gimbel that Stinson had told you that he had committed the armed robbery prior to the trial?

“A. I told Mr. Gimbel that, yes.”

THE BOARD FINDS:

The Board finds that Pate personally knew of Stinson’s involvement in the armed robbery prior to the trial and, as a result, the testimony presented by Cesar Stinson at the first hearing is not evidence that “has been discovered since conviction,” under sec. 285.05(3), Stats. The claimant’s reason for not wanting to use this at his trial was the fear of reprisal by one of the participants.

THE BOARD CONCLUDES:

Accordingly, the Claims Board cannot ground its finding of innocence beyond a reasonable doubt under subsec. (3) of sec. 285.05, Stats., upon any of this aforementioned evidence known to the claimant prior to the claimant’s trial. Although this evidence is different from that submitted at the trial, it is not evidence or circumstances discovered or which have arisen since Gerald Pate’s conviction. In the absence of such evidence the Claims Board finds that it is not clear beyond a reasonable doubt that Gerald Pate was innocent of the crime for which he suffered imprisonment, and the claim is denied. (Members Main and Parsons dissent.)

Dated at Madison, Wisconsin, this 28th day of June, 1977.

GERALD D. KLECZKA
Senate Finance Committee

VIRGIL D. ROBERTS
Assembly Finance Committee

EDWARD M. PARSONS
Representative of Governor

EDWARD D. MAIN
Representative of Secretary of
Administration

ALLAN P. HUBBARD
Representative of Attorney
General

MESSAGE FROM THE ASSEMBLY

By Everett E. Bolle, chief clerk.

Mr. President:

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

Assembly Bill 237

Assembly Bill 462

Assembly Bill 593

Assembly Bill 663

Concurred in:

Senate Bill 28

MESSAGE FROM THE ASSEMBLY CONSIDERED

Assembly Bill 237

Relating to awarding costs and fees if an action, special proceeding, cross complaint or counterclaim is determined to be frivolous.

By Representatives Hanson, Rooney, Rogers, Roth, Kincaid, Plewa, Kirby, Byers, Gunderson, Tuczynski, Potter, Gerlach, Tregoning, Lallensack, Dandeneau, Roberts, Barczak, Dorff, Schmidt, Donoghue, Norquist, Ward, Menos, Day, Murray, Lewison, Conradt, Bradley and Engeleiter.

Read first time and referred to committee on Judiciary and Consumer Affairs.

Assembly Bill 462

Relating to sanitary permits for installation of private domestic sewage treatment and disposal systems and providing a penalty.

By Legislative Council.

Read first time and referred to committee on Natural Resources and Tourism.

Assembly Bill 593

Relating to county commissions on aging.

By Representatives Schrickler, Schmidt, Byers and Kincaid.

Read first time and referred to committee on Agriculture, Aging and Labor.

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Assembly Bill 663

Relating to limitations on giving information relating to general relief, requiring record-keeping of relief paid and providing a penalty.

By Representatives Loftus and Schricker, cosponsored by Senator Thompson.

Read first time and referred to committee on Human Services.

MOTIONS

By request of Senator Flynn, with unanimous consent, the motion for reconsideration of the vote by which **Senate Bill 55** was refused passage, was taken from the table and considered for action at this time.

By request of Senator Bablitch, with unanimous consent, the motion for reconsideration of **Senate Bill 55** was placed at the foot of the calendar.

By request of Senator Bablitch, with unanimous consent, the calendar of June 29 was considered for action at this time.

CALENDAR OF JUNE 29

Assembly Bill 666

Relating to making the 55 mile per hour speed limit and certain other energy conservation measures permanent and relating to suspending a person's operating privilege upon the person's conviction by a court of exceeding the 55 mile per hour limit by 25 miles per hour or more.

Read a second time.

Senate amendment 1 to **Assembly Bill 666** offered by Senator Berger.

Senator Bablitch moved rejection.

The ayes and noes were demanded and the vote was: ayes, 22; noes, 10; absent or not voting, 1; as follows:

Ayes -- Senators Adelman, Bablitch, Braun, Chilsen, Dorman, Flynn, Frank, Goyke, Harnisch, Kleczka, McKenna, McCallum, Morrison, Murphy, Parys, Peloquin, Radosevich, Risser, Sensenbrenner, Theno, Thompson and Van Sistine -- 22.

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Noes -- Senators Berger, Bidwell, Keppler, Krueger, Lasee, Lorge, Maurer, Offner, Petri and Swan -- 10.

Absent or not voting -- Senator Cullen -- 1.

So the motion prevailed.

Ordered to a third reading.

By request of Senator Bablitch, with unanimous consent, the bill was considered for final action at this time.

Assembly Bill 666

Read a third time.

The ayes and noes were required and the vote was: ayes, 29; noes, 2; absent or not voting, 2; as follows:

Ayes -- Senators Adelman, Bablitch, Berger, Bidwell, Braun, Chilsen, Dorman, Flynn, Frank, Goyke, Kleczka, McKenna, Lasee, Lorge, McCallum, Maurer, Morrison, Murphy, Offner, Parys, Peloquin, Petri, Radosevich, Risser, Sensenbrenner, Swan, Theno, Thompson and Van Sistine -- 29.

Noes -- Senators Keppler and Krueger -- 2.

Absent or not voting -- Senators Cullen and Harnisch -- 2.

So the bill was concurred in.

Ordered immediately messaged.

By request of Senator Parys, with unanimous consent, the senate recessed until 12:15 P.M.

11:04 A.M.

RECESS

12:15 P.M.

The senate reconvened.

By request of Senator Kleczka, with unanimous consent, the senate recessed until 2:00 P.M.

12:16 P.M.

RECESS

2:00 P.M.

The senate reconvened.

Senator Kleczka moved a

CALL OF THE SENATE

Which motion was supported.

The sergeant-at-arms was directed to close the doors and the clerk to call the roll.

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

Senators Adelman, Bablitch, Berger, Bidwell, Braun, Cullen, Dorman, Flynn, Frank, Goyke, Harnisch, Keppler, Kleczka, Krueger, McKenna, Lasee, McCallum, Murphy, Offner, Parys, Peloquin, Petri, Radosevich, Risser, Sensenbrenner, Swan, Theno, Thompson and Van Sistine -- 29.

Absent -- Senators Chilsen, Lorge, Maurer and Morrison -- 4.

Absent with leave -- None.

By request of Senator Bablitch, with unanimous consent, the call was raised.

Senator Chilsen entered the chamber.

By request of Senator Theno, with unanimous consent, the senate recessed until 2:20 P.M.

2:07 P.M.

RECESS

2:20 P.M.

The senate reconvened.

Senate Resolution 11

Directing the senate committee on human services to create a subcommittee to investigate the juvenile correction system.

Read and adopted.

Senate Bill 1

Relating to free small game licenses for residents over 65 years of age.

Read a second time.

By request of Senator Berger, with unanimous consent, senate amendment 1 was laid on the table.

The question was: Adoption of senate amendment 2?

Senator Murphy moved rejection.

Senator Goyke raised the point of order that **Senate Bill 1** was required to be referred to the Joint Survey Committee on Tax Exemption.

The chair took the point of order under advisement.

Senate Bill 426

Relating to a residential landlord and tenant act.

Read a second time.

Senator Murphy moved indefinite postponement of **Senate Bill 426**.

The ayes and noes were demanded and the vote was: ayes, 11; noes, 22; absent or not voting, 0; as follows:

Ayes -- Senators Bidwell, Chilsen, Frank, Keppler, Kleczka, Krueger, Lasee, Lorge, McCallum, Murphy and Sensenbrenner -- 11.

Noes -- Senators Adelman, Bablitch, Berger, Braun, Cullen, Dorman, Flynn, Goyke, Harnisch, McKenna, Maurer, Morrison, Offner, Parys, Peloquin, Petri, Radosevich, Risser, Swan, Theno, Thompson and Van Sistine -- 22.

Absent or not voting -- None.

So the motion did not prevail.

The question was: Adoption of senate amendment 1?

Adopted.

The question was: Adoption of senate amendment 2?

Adopted.

Senate amendment 3 to **Senate Bill 426** offered by Senators Thompson, Frank, Van Sistine, Chilsen, Murphy, Harnisch and Sensenbrenner.

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Senate amendment 3 adopted.

Senate amendment 4 to Senate Bill 426 offered by Senators Thompson, Van Sistine, Murphy and Sensenbrenner.

Senator Flynn moved rejection.

The motion did not prevail.

The question was: Adoption of senate amendment 4?

The ayes and noes were demanded and the vote was: ayes, 17; noes, 16; absent or not voting, 0; as follows:

Ayes -- Senators Berger, Bidwell, Chilsen, Frank, Keppler, Kleczka, Krueger, Lasee, McCallum, Murphy, Parys, Petri, Risser, Sensenbrenner, Theno, Thompson and Van Sistine -- 17.

Noes -- Senators Adelman, Bablitch, Braun, Cullen, Dorman, Flynn, Goyke, Harnisch, McKenna, Lorge, Maurer, Morrison, Offner, Peloquin, Radosevich and Swan -- 16.

Absent or not voting -- None.

So the amendment was adopted.

By request of Senators Bablitch and Krueger, pursuant to senate rule 76, a five minute limit was placed on debate for each member.

Senate amendment 5 to Senate Bill 426 offered by Senator Murphy.

Senator Flynn moved rejection.

The ayes and noes were demanded and the vote was: ayes, 20; noes, 13; absent or not voting, 0; as follows:

Ayes -- Senators Bablitch, Berger, Braun, Chilsen, Cullen, Dorman, Flynn, Goyke, Harnisch, McKenna, Maurer, Morrison, Parys, Peloquin, Radosevich, Risser, Swan, Theno, Thompson and Van Sistine -- 20.

Noes -- Senators Adelman, Bidwell, Frank, Keppler, Kleczka, Krueger, Lasee, Lorge, McCallum, Murphy, Offner, Petri and Sensenbrenner -- 13.

Absent or not voting -- None.

So the motion prevailed.

Senate amendment 6 to Senate Bill 426 offered by Senators Murphy and Sensenbrenner.

Senator Flynn moved rejection.

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The motion prevailed.

Senate amendment 7 to **Senate Bill 426** offered by Senators Sensenbrenner, Van Sistine and Murphy.

Senator Flynn moved rejection.

The ayes and noes were demanded and the vote was: ayes, 12; noes, 20; absent or not voting, 1; as follows:

Ayes -- Senators Bablitch, Berger, Braun, Cullen, Dorman, Flynn, Goyke, Kleczka, Krueger, Radosevich, Risser and Swan -- 12.

Noes -- Senators Adelman, Bidwell, Chilsen, Frank, Harnisch, Keppler, McKenna, Lasee, Lorge, McCallum, Maurer, Morrison, Murphy, Offner, Parys, Peloquin, Petri, Sensenbrenner, Theno and Van Sistine -- 20.

Absent or not voting -- Senator Thompson -- 1.

So the motion did not prevail.

The question was: Adoption of senate amendment 7?

Adopted.

Senate amendment 8 to **Senate Bill 426** offered by Senators Murphy and Sensenbrenner.

Senator Flynn moved rejection.

The ayes and noes were demanded and the vote was: ayes, 23; noes, 10; absent or not voting, 0; as follows:

Ayes -- Senators Adelman, Bablitch, Berger, Braun, Chilsen, Cullen, Dorman, Flynn, Goyke, Harnisch, Kleczka, McKenna, Maurer, Morrison, Offner, Parys, Peloquin, Radosevich, Risser, Swan, Theno, Thompson and Van Sistine -- 23.

Noes -- Senators Bidwell, Frank, Keppler, Krueger, Lasee, Lorge, McCallum, Murphy, Petri and Sensenbrenner -- 10.

Absent or not voting -- None.

So the motion prevailed.

LEAVE OF ABSENCE

By request of Senator Berger, with unanimous consent, he was granted a leave of absence beginning at 6:00 P.M. for the balance of the day.

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Senate amendment 9 to Senate Bill 426 offered by Senators Chilsen, Murphy, Harnisch and Sensenbrenner.

Senator Flynn moved rejection.

The ayes and noes were demanded and the vote was: ayes, 14; noes, 19; absent or not voting, 0; as follows:

Ayes -- Senators Bablitch, Berger, Braun, Cullen, Dorman, Flynn, Goyke, McKenna, Maurer, Peloquin, Radosevich, Swan, Thompson and Van Sistine -- 14.

Noes -- Senators Adelman, Bidwell, Chilsen, Frank, Harnisch, Keppler, Kleczka, Krueger, Lasee, Lorge, McCallum, Morrison, Murphy, Offner, Parys, Petri, Risser, Sensenbrenner and Theno -- 19.

Absent or not voting -- None.

So the motion did not prevail.

The question was: Adoption of senate amendment 9?

Adopted.

Senate amendment 10 to Senate Bill 426 offered by Senators Murphy and Sensenbrenner.

Senate amendment 10 adopted.

Senate amendment 11 to Senate Bill 426 offered by Senators Frank, Murphy and Sensenbrenner.

Senator Flynn moved rejection.

Kleczka in the chair.

5:40 P.M.

The question was: Rejection of senate amendment 11?

The ayes and noes were demanded and the vote was: ayes, 17; noes, 16; absent or not voting, 0; as follows:

Ayes -- Senators Bablitch, Berger, Braun, Cullen, Dorman, Flynn, Goyke, Harnisch, McKenna, Maurer, Morrison, Offner, Peloquin, Radosevich, Swan, Thompson and Van Sistine -- 17.

Noes -- Senators Adelman, Bidwell, Chilsen, Frank, Keppler, Kleczka, Krueger, Lasee, Lorge, McCallum, Murphy, Parys, Petri, Risser, Sensenbrenner and Theno -- 16.

Absent or not voting -- None.

So the motion prevailed.

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Senate amendment 12 to **Senate Bill 426** offered by Senator Murphy.

Senator Flynn moved rejection.

The motion prevailed.

Senate amendment 13 to **Senate Bill 426** offered by Senators Murphy and Sensenbrenner.

Senator Flynn moved rejection.

The motion prevailed.

Senate amendment 14 to **Senate Bill 426** offered by Senator Murphy.

Senator Flynn moved rejection.

The motion prevailed.

Senate amendment 15 to **Senate Bill 426** offered by Senators Murphy and Sensenbrenner.

Senator Flynn moved rejection.

The motion prevailed.

Senate amendment 16 to **Senate Bill 426** offered by Senator Thompson.

By request of Senator Flynn, with unanimous consent, senate amendment 16 was placed after senate amendment 18.

Senate amendment 17 to **Senate Bill 426** offered by Senator Murphy.

Senator Flynn raised the point of order that senate amendment 17 was identical to senate amendment 4 and was therefore, not germane.

The chair ruled the point of order well taken pursuant to senate rule 50 (6).

Senate amendment 18 To **Senate Bill 426** offered by Senators Chilsen and Petri.

Senator Flynn moved rejection.

The ayes and noes were demanded and the vote was: ayes, 23; noes, 10; absent or not voting, 0; as follows:

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Ayes -- Senators Adelman, Bablitch, Berger, Braun, Cullen, Dorman, Flynn, Frank, Goyke, Harnisch, Kleczka, McKenna, Maurer, Morrison, Offner, Parys, Peloquin, Radosevich, Risser, Swan, Theno, Thompson and Van Sistine -- 23.

Noes -- Senators Bidwell, Chilsen, Keppler, Krueger, Lasec, Lorge, McCallum, Murphy, Petri and Sensenbrenner -- 10.

Absent or not voting -- None.

So the motion prevailed.

Senator Risser moved reconsideration of the vote by which senate amendment 4 to **Senate Bill 426** was adopted.

The ayes and noes were demanded and the vote was: ayes, 18; noes, 15; absent or not voting, 0; as follows:

Ayes -- Senators Adelman, Bablitch, Braun, Cullen, Dorman, Flynn, Goyke, Harnisch, McKenna, Lorge, Maurer, Morrison, Offner, Peloquin, Radosevich, Risser, Swan and Van Sistine -- 18.

Noes -- Senators Berger, Bidwell, Chilsen, Frank, Keppler, Kleczka, Krueger, Lasec, McCallum, Murphy, Parys, Petri, Sensenbrenner, Theno and Thompson -- 15.

Absent or not voting -- None.

So the motion prevailed.

The question was: Adoption of senate amendment 4?

The ayes and noes were demanded and the vote was: ayes, 14; noes, 19; absent or not voting, 0; as follows:

Ayes -- Senators Berger, Bidwell, Chilsen, Frank, Keppler, Kleczka, Krueger, Lasec, McCallum, Murphy, Parys, Petri, Sensenbrenner and Theno -- 14.

Noes -- Senators Adelman, Bablitch, Braun, Cullen, Dorman, Flynn, Goyke, Harnisch, McKenna, Lorge, Maurer, Morrison, Offner, Peloquin, Radosevich, Risser, Swan, Thompson and Van Sistine -- 19.

Absent or not voting -- None.

So the amendment was not adopted.

The question was: Adoption of senate amendment 16?

Senate amendment 1 to senate amendment 16 to **Senate Bill 426** offered by Senator Flynn.

Senate amendment 1 adopted.

Senate amendment 16 adopted.

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Senator Sensenbrenner raised the point of order that, pursuant to joint rule 41, **Senate Bill 426** required a fiscal estimate.

The chair ruled the point of order not well taken.

Senator Lorge moved indefinite postponement of **Senate Bill 426**.

The ayes and noes were demanded and the vote was: ayes, 14; noes, 19; absent or not voting, 0; as follows:

Ayes -- Senators Berger, Bidwell, Chilsen, Frank, Harnisch, Keppler, Kleczka, Krueger, Lasee, Lorge, McCallum, Murphy, Petri and Sensenbrenner -- 14.

Noes -- Senators Adelman, Bablitch, Braun, Cullen, Dorman, Flynn, Goyke, McKenna, Maurer, Morrison, Offner, Parys, Peloquin, Radosevich, Risser, Swan, Theno, Thompson and Van Sistine -- 19.

Absent or not voting -- None.

So the motion did not prevail.

Ordered to a third reading.

By request of Senator Bablitch, with unanimous consent, the bill was considered for final action at this time.

Senator Murphy objected.

Senator Bablitch moved that the rules be suspended and the bill be considered for final action at this time.

The ayes and noes were required and the vote was: ayes, 23; noes, 10; absent or not voting, 0; as follows:

Ayes -- Senators Adelman, Bablitch, Berger, Braun, Cullen, Dorman, Flynn, Frank, Goyke, Harnisch, Kleczka, McKenna, Maurer, Morrison, Offner, Parys, Peloquin, Radosevich, Risser, Swan, Theno, Thompson and Van Sistine -- 23.

Noes -- Senators Bidwell, Chilsen, Keppler, Krueger, Lasee, Lorge, McCallum, Murphy, Petri and Sensenbrenner -- 10.

Absent or not voting -- None.

More than two-thirds having voted in the affirmative, the motion prevailed.

Senate Bill 426

Read a third time.

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The ayes and noes were required and the vote was: ayes, 20; noes, 13; absent or not voting, 0; as follows:

Ayes -- Senators Adelman, Bablitch, Berger, Braun, Cullen, Dorman, Flynn, Goyke, McKenna, Maurer, Morrison, Offner, Parys, Peloquin, Radosevich, Risser, Swan, Theno, Thompson and Van Sistine -- 20.

Noes -- Senators Bidwell, Chilsen, Frank, Harnisch, Keppler, Kleczka, Krueger, Lasee, Lorge, McCallum, Murphy, Petri and Sensenbrenner -- 13.

Absent or not voting -- None.

So the bill passed.

LEAVE OF ABSENCE

By request of Senator McKenna, with unanimous consent, he was granted a leave of absence for the balance of the day.

President pro tempore of the senate in the chair.

6:45 P.M.

Senate Bill 480

Relating to legislation required to implement the 1977-79 compensation plan proposals of the director of personnel, granting rule-making authority and making an appropriation.

Read a second time.

The question was: Shall the bill be ordered to a third reading?

The ayes and noes were demanded and the vote was: ayes, 20; noes, 11; absent or not voting, 2; as follows:

Ayes -- Senators Adelman, Bablitch, Braun, Cullen, Dorman, Flynn, Frank, Goyke, Harnisch, Kleczka, Krueger, Maurer, Morrison, Offner, Peloquin, Radosevich, Risser, Theno, Thompson and Van Sistine -- 20.

Noes -- Senators Bidwell, Chilsen, Keppler, Lasee, Lorge, McCallum, Murphy, Parys, Petri, Sensenbrenner and Swan -- 11.

Absent or not voting -- Senators Berger and McKenna -- 2.

So the bill was ordered to a third reading.

Senator Bablitch asked unanimous consent that the bill be considered for final action at this time.

Senator Bidwell objected.

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Senator Bablitch moved that the rules be suspended and the bill be considered for final action at this time.

The ayes and noes were required and the vote was: ayes, 22; noes, 9; absent or not voting, 2; as follows:

Ayes -- Senators Adelman, Bablitch, Braun, Cullen, Dorman, Flynn, Frank, Goyke, Harnisch, Kleczka, Krueger, Maurer, Morrison, Offner, Parys, Peloquin, Radosevich, Risser, Swan, Theno, Thompson and Van Sistine -- 22.

Noes -- Senators Bidwell, Chilsen, Keppler, Lasee, Lorge, McCallum, Murphy, Petri and Sensenbrenner -- 9.

Absent or not voting -- Senators Berger and McKenna -- 2.

More than two-thirds having voted in the affirmative, the motion prevailed.

Senate Bill 480

Read a third time.

The ayes and noes were required and the vote was: ayes, 22; noes, 10; absent or not voting, 1; as follows:

Ayes -- Senators Adelman, Bablitch, Berger, Braun, Dorman, Flynn, Frank, Goyke, Harnisch, Kleczka, Krueger, McCallum, Maurer, Morrison, Offner, Peloquin, Radosevich, Risser, Swan, Theno, Thompson and Van Sistine -- 22.

Noes -- Senators Bidwell, Chilsen, Cullen, Keppler, Lasee, Lorge, Murphy, Parys, Petri and Sensenbrenner -- 10.

Absent or not voting -- Senator McKenna -- 1.

So the bill passed.

Senate Bill 481

Relating to the amount of group life insurance available to certain members of the university of Wisconsin system faculty and academic staff employer contributions for the health insurance premiums of certain state employees.

Read a second time.

Ordered to a third reading.

By request of Senator Bablitch, with unanimous consent, the bill was considered for final action at this time.

Senate Bill 481

Read a third time.

The ayes and noes were required and the vote was: ayes, 23; noes, 9; absent or not voting, 1; as follows:

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Ayes -- Senators Adelman, Bablitch, Braun, Cullen, Dorman, Flynn, Frank, Goyke, Kleczka, Krueger, Lasee, McCallum, Maurer, Morrison, Offner, Parys, Peloquin, Radosevich, Risser, Swan, Theno, Thompson and Van Sistine -- 23.

Noes -- Senators Berger, Bidwell, Chilsen, Harnisch, Keppler, Lorge, Murphy, Petri and Sensenbrenner -- 9.

Absent or not voting -- Senator McKenna -- 1.

So the bill passed.

Assembly Bill 96

Relating to a general "good Samaritan" law.

The question was: Shall the senate adhere to its position on senate substitute amendment 1?

The senate adhered to its position.

Senator Bablitch moved that the senate ask for a committee of conference on **Assembly Bill 96**.

The motion prevailed.

Assembly Bill 448

Relating to filing fees for amendments to articles of incorporation by railroads.

Read a second time.

Ordered to a third reading.

By request of Senator Bablitch, with unanimous consent, the bill was considered for final action at this time.

Assembly Bill 448

Read a third time.

The ayes and noes were required and the vote was: ayes, 23; noes, 9; absent or not voting, 1; as follows:

Ayes -- Senators Adelman, Bablitch, Bidwell, Chilsen, Cullen, Dorman, Frank, Keppler, Kleczka, Krueger, Lasee, Lorge, McCallum, Maurer, Offner, Parys, Petri, Risser, Sensenbrenner, Swan, Theno, Thompson and Van Sistine -- 23.

Noes -- Senators Berger, Braun, Flynn, Goyke, Harnisch, Morrison, Murphy, Peloquin and Radosevich -- 9.

Absent or not voting -- Senator McKenna -- 1.

So the bill was concurred in.

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Assembly Bill 572

Relating to payment of legal fees for defense of national guard members prosecuted for acts committed while in performance of military duties.

Read a second time.

Ordered to a third reading.

By request of Senator Bablitch, with unanimous consent, the bill was considered for final action at this time.

Assembly Bill 572

Read a third time.

The ayes and noes were demanded and the vote was: ayes, 30; noes, 2; absent or not voting, 1; as follows:

Ayes -- Senators Adelman, Bablitch, Bidwell, Braun, Chilsen, Cullen, Dorman, Frank, Goyke, Harnisch, Keppler, Kleczka, Krueger, Lasee, Lorge, McCallum, Maurer, Morrison, Murphy, Offner, Parys, Peloquin, Petri, Radosevich, Risser, Sensenbrenner, Swan, Theno, Thompson and Van Sistine -- 30.

Noes -- Senators Berger and Flynn -- 2.

Absent or not voting -- Senator McKenna -- 1.

So the bill was concurred in.

Assembly Joint Resolution 47

Relating to a priority drafting quota system for bill drafting.

Read.

Senator Theno moved nonconcurrency.

Kleczka in the chair.

7:23 P.M.

Senator Flynn asked unanimous consent that **Assembly Joint Resolution 47** be referred to the committee on Senate Organization.

Senator Risser objected.

Senator Flynn moved that **Assembly Joint Resolution 47** be referred to the committee on Senate Organization.

Senator Risser asked unanimous consent that **Assembly Joint Resolution 47** and **Senate Bill 133** be placed at the foot of the calendar.

Senator Goyke objected.

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Senator Risser asked unanimous consent that **Assembly Joint Resolution 47** and **Senate Bill 133** be referred to the committee on Senate Organization.

Senator Dorman objected.

By request of Senator Bablitch, with unanimous consent, **Assembly Joint Resolution 47** and **Senate Bill 133** were referred to the committee on Senate Organization.

President pro tempore of the senate in the chair.

7:32 P.M.

Senate Bill 55

Relating to exempting loans of \$100,000 or more from the usury statutes.

The question was: Reconsideration of the vote by which the bill was refused passage?

By request of Senator Bablitch, with unanimous consent, the vote by which the bill was refused passage was reconsidered.

The question was: Shall **Senate Bill 55** pass?

By request of Senator Bablitch, with unanimous consent, **Senate Bill 55** was referred to the committee on Senate Organization.

RULING OF THE CHAIR

Earlier today Senator Goyke raised the point of order that **Senate Bill 1** constituted a tax exemption and therefore was required to be referred to the Joint Survey Committee on Tax Exemptions pursuant to sec. 13.52 of the Wisconsin Statutes.

The chair took the point of order under advisement.

Senate Bill 1 would grant free small game licenses to Wisconsin residents who are 65 years of age or over. The point of order raised by Senator Goyke goes to the very heart of the difference between a "license fee" and a "tax".

A license is defined as "a formal permission to do something; especially, authorization by law to do some specified thing." Similarly, a "fee" is defined as "a charge fixed by law...for use of a privilege."

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A tax, on the other hand, is defined as the "requirement to pay a percentage of income, property value, etc. for the support of government."

These definitions make clear the distinction between the two.

Historically, the primary purpose of licensing and license fees is to *regulate* activity. It is true that license fees raise revenue, but that is simply an ancillary effect. In fact, many license fees are set only at a level sufficient to pay the cost of regulation.

Taxes, on the other hand, are enacted primarily to raise revenue. Taxes can regulate activity, but that is usually a secondary effect.

The Wisconsin Supreme Court in *State ex rel. Atty. Gen. v. Wisconsin Constructors*, 222 Wis. 279 said: "The distinction between taxes and fees is quite clear. 'Taxes', it was said in *Fitch v. Wisconsin Tax comm.* 201 Wis. 383, 'are the enforced proportional contributions from persons and property, levied by the state by virtue of its sovereignty for the support of government and for all public needs' ... Taxes are imposed for the purpose of general revenue. License and other fees are ordinarily imposed to cover the cost and expense of supervision or regulation."

The distinction between taxing and licensing is admittedly blurred on many occasions but, in the opinion of the chair, the distinction in this case is sufficiently clear. The fee required to obtain a small game license is *not* a tax in the generally understood meaning of the word and therefore does not come within the purview of sec. 13.52 and the Joint Survey Committee on Tax Exemptions.

License fee exemptions similar to Senate Bill 1 have been acted on and passed by earlier legislatures without being referred to the Joint Survey Committee on Tax Exemptions.

Chapter 628, Laws of 1965, which provides that members of the armed forces be issued free fishing licenses and small game hunting licenses without charge is a good example.

Therefore, it is the chair's opinion that the point of order is not well taken.

Sincerely,
FRED A. RISSER
President pro tempore

Senate Bill 1

Relating to free small game licenses for residents over 65 years of age.

The question was: Rejection of senate amendment 2?

The ayes and noes were demanded and the vote was: ayes, 18; noes, 14; absent or not voting, 1; as follows:

Ayes -- Senators Adelman, Bidwell, Chilsen, Dorman, Frank, Harnisch, Keppler, Kleczka, Krueger, Lasee, Murphy, Peloquin, Petri, Risser, Sensenbrenner, Swan, Theno and Van Sistine -- 18.

Noes -- Senators Bablitch, Berger, Braun, Cullen, Flynn, Goyke, Lorge, McCallum, Maurer, Morrison, Offner, Parys, Radosevich and Thompson -- 14.

Absent or not voting -- Senator McKenna -- 1.

So the motion prevailed.

Senator Goyke moved that **Senate Bill 1** be referred to the committee on Agriculture, Aging and Labor.

The ayes and noes were demanded and the vote was: ayes, 12; noes, 20; absent or not voting, 1; as follows:

Ayes -- Senators Bablitch, Berger, Braun, Cullen, Dorman, Flynn, Goyke, Offner, Parys, Radosevich, Risser and Thompson -- 12.

Noes -- Senators Adelman, Bidwell, Chilsen, Frank, Harnisch, Keppler, Kleczka, Krueger, Lasee, Lorge, McCallum, Maurer, Morrison, Murphy, Peloquin, Petri, Sensenbrenner, Swan, Theno and Van Sistine -- 20.

Absent or not voting -- Senator McKenna -- 1.

So the motion did not prevail.

Ordered to a third reading.

By request of Senator Bablitch, with unanimous consent, the bill was considered for final action at this time.

Senate Bill 1

Read a third time.

The ayes and noes were required and the vote was: ayes, 15; noes, 17; absent or not voting, 1; as follows:

Ayes -- Senators Bidwell, Chilsen, Frank, Harnisch, Keppler, Kleczka, Krueger, Lasee, Maurer, Murphy, Peloquin, Petri, Swan, Theno and Van Sistine -- 15.

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Noes -- Senators Adelman, Bablitch, Berger, Braun, Cullen, Dorman, Flynn, Goyke, Lorge, McCallum, Morrison, Oifner, Parys, Radosevich, Risser, Sensenbrenner and Thompson -- 17.

Absent or not voting -- Senator McKenna -- 1.

So the bill did not pass.

By request of Senator Bablitch, with unanimous consent, all actions were ordered immediately messaged.

AMENDMENTS OFFERED

Senate substitute amendment 2 to **Senate Bill 210** by Senator Keppler.

Senate amendment 1 to senate amendment 4 to **Assembly Bill 216** by Senator McKenna.

By request of Senator Bablitch, with unanimous consent, the journal showed that Senator Chilsen entered the chambers 1 minute after the call of the senate at 2:00 P.M.

Upon motion of Senator Bablitch the senate adjourned until 9:00 A.M. Thursday, June 30.

8:05 P.M.

CHIEF CLERK'S CORRECTION

Suggested by Legislative Reference Bureau

Relating to: Senate substitute amendment 1 to **Senate Bill 111**

On page 9, line 5, substitute "beneficiation" for "benefication".

CHIEF CLERK'S REPORT

The chief clerk records:

Senate Bill 111

Correctly enrolled and presented to the Governor on June 29, 1977.