

JOURNAL OF THE ASSEMBLY [August 15, 1979]

STATE OF WISCONSIN

# Assembly Journal

Eighty-Fourth Regular Session

WEDNESDAY, August 15, 1979.

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

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## AMENDMENTS OFFERED

Assembly substitute amendment 1 to **Assembly Bill 183** offered by committee on Energy.

Assembly substitute amendment 1 to **Assembly Bill 527** offered by Representative Merkt.

Assembly substitute amendment 1 to **Assembly Bill 343** offered by Representative Czerwinski.

Assembly amendment 2 to **Assembly Bill 549** offered by Representative Roberts.

Assembly amendment 1 to **Assembly Bill 741** offered by Representative Rogers.

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## INTRODUCTION AND REFERENCE OF PROPOSALS

Read first time and referred:

### **Assembly Joint Resolution 73**

Relating to the earmarking of fines for deposit in the school fund (first consideration).

By Representatives Metz, Ulichny, Goodrich, Jackamonis, Tregoning, Wagner, Prosser, Duren, Becker, Munts and Coggs.

To committee on Revenue.

### **Assembly Joint Resolution 74**

Relating to legislative immunity from arrest and civil process (first consideration).

By Representatives Shabaz and Young, co-sponsored by Senator Kleczka.

To committee on State Affairs.

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**Assembly Bill 817**

Relating to creating an exception to the definition of chauffeur.  
By Representatives Thompson, Radtke and Laatsch, co-sponsored by Senator Bidwell, by request of Columbia County Board of Supervisors.

To committee on Highways.

**Assembly Bill 818**

Relating to false claims of incumbency and providing a penalty.  
By Representative Potter.

To committee on Elections.

**Assembly Bill 819**

Relating to a refundable tax credit for elderly persons not residing in community-based residential facilities or nursing homes and making an appropriation.

By Representatives Czerwinski, Norquist, Loftus, Flintrop, Medinger and Smith, co-sponsored by Senator Cullen.

To committee on Revenue.

**Assembly Bill 820**

Relating to required disability insurance coverage for at least 2 policyholder visits per year to a physician's office.

By Representatives Czerwinski, Hauke, Wahner and Loftus.

To committee on Financial Institutions.

**Assembly Bill 821**

Relating to investment and transfer of securities from the public debt amortization fund in 1st class cities.

By Representative Leopold, by request of city of Milwaukee.

To committee on Local Affairs.

**Assembly Bill 822**

Relating to theft of library material and providing penalties.

By Representatives Prosser, McClain, Dilweg, Rutkowski, Plewa, Thompson, Lewis, Donoghue, Merkt, Becker, Lee, Schmidt, Vanderperren, Omernick, Menos, Porter, Kincaid, Conradt, Rogers, McEssy, Andrea, Young, Ladwig, Laatsch, Lingren, Goodrich, Bradley and Metz, co-sponsored by Senators Adelman, Murphy, Hanaway, Lorge, Van Sistine, Kreul, McCallum and Lasee.

To committee on Criminal Justice and Public Safety.

**Assembly Bill 823**

Relating to allowing property owners to challenge assessments of property in other taxation districts.

By Representatives Roberts, Hasenohr and Shoemaker, co-sponsored by Senator Offner.

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To committee on Revenue.

**Assembly Bill 824**

Relating to certifying operators of X-ray machines, granting rule-making authority and making an appropriation.

By Representatives D. Travis, Vanderperren, Loftus, Everson, Smith, Lorman, Ferrall, Helbach, McClain, Schmidt and Wahner, co-sponsored by Senators Strohl, Thompson, Flynn, Cullen and Bear.

To committee on Health and Social Services.

**Assembly Bill 825**

Relating to the use of multiple-beam headlamps during daylight hours and providing a penalty.

By Representative Shabaz, co-sponsored by Senator Murphy.

To committee on Highways.

**Assembly Bill 826**

Relating to real estate transfer returns filed by this state.

By Representative Shabaz, co-sponsored by Senator Adelman.

To committee on Commerce and Consumer Affairs.

**Assembly Bill 827**

Relating to permitting transfers from variable to fixed annuity division in the Wisconsin retirement fund, state teachers retirement system and Milwaukee teachers retirement fund, closing the variable annuity divisions to new entries and granting rule-making power.

By Representatives Wood, Jackamonis, Behnke, Wahner and Ferrall.

To Joint Survey Committee on Retirement Systems.

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COMMITTEE REPORTS

The committee on Commerce and Consumer Affairs reports and recommends:

**Assembly Bill 517**

Relating to the filing of elections relating to certain corporate liquidations.

Passage: Ayes: (8) Noes: (0)

To committee on Rules.

**Senate Bill 212**

Relating to fees for financing statement searches by the secretary of state and making an appropriation.

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Concurrence: Ayes: (6) Noes: (2)

To committee on Rules.

MIDGE MILLER

Chairperson

The committee on Elections reports and recommends:

**Assembly Bill 607**

Relating to use of voting machines at elections.

Passage: Ayes: (5) Noes: (3)

To committee on Rules.

**Assembly Bill 615**

Relating to the hours for operation of polling places.

Passage: Ayes: (5) Noes: (3)

To committee on Rules.

CALVIN POTTER

Chairperson

The committee on State Affairs reports and recommends:

**Assembly Bill 346**

Relating to issuing special identification cards for disabled persons, providing motor vehicle parking privileges for disabled persons, granting rule-making authority and providing a penalty.

Adoption of assembly amendment 1:

Ayes: (9) Noes: (0)

Passage: Ayes: (9) Noes: (0)

To Joint Committee on Finance.

JOHN PLEWA

Chairperson

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OPINION OF THE ATTORNEY GENERAL

OAG 72-79

August 8, 1979

Mr. Ed Jackamonis, Chairperson  
Assembly Organization Committee  
Room 211 West, State Capitol  
Madison, Wisconsin 53702

Dear Mr. Jackamonis:

The Assembly Organization Committee has requested my opinion on two questions involving 1979 AB 353.

That bill, as described in the analysis by the Legislative Reference Bureau, provides:

This proposal requires each candidate for the legislature, at the time he or she files a declaration of acceptance of nomination, to declare in writing either that he or she will accept the regular statutory salary (\$19,767 per year on January 1, 1979) or that he or she voluntarily agrees to accept a specified lower salary. If a candidate who agrees to accept a lower salary is elected, that person is paid the lower amount for his or her entire term. If a candidate agrees to accept a higher salary than the regular salary, the agreement is of no effect.

The first question is whether this bill conflicts with sec. 12.11, Stats. In my opinion the answer is yes.

Section 12.11, Stats., prohibits election bribery. Among other things, it forbids promises to give anything of value to any elector in order to induce that elector to vote or refrain from voting for or against a particular person. An offer by a candidate to accept a lesser salary than that fixed by law, or to refund a portion of the salary, violates election bribery statutes. *See* 21 Op. Att'y Gen. 774 (1932); *State ex rel. Newell v. Purdy*, 36 Wis. 213 (1874); *Sparks v. Boggs*, 339 S.W.2d 480 (Ky. 1960); *Tipton v. Sands*, 103 Mt. 1, 60 P.2d 662 (1936); 26 Am. Jur. 2d *Elections* sec. 283; and 63 Am. Jur. 2d *Public Officers and Employees* secs. 393 and 394. As explained in 21 Op. Att'y Gen. 774, 776 (1932):

In view of the express prohibitions of the above quoted statutes, it must be held that an offer to serve for less than the legal salary made by a candidate for office in the course of his campaign for election is in violation of such statutes. Of course, so far as bribery is concerned, it is apparent that the

amount which any individual taxpayer would gain through the reduction of a public officer's salary would be insignificant. Nevertheless, a proposal by a candidate to serve for a reduced compensation amounts to an offer to give money to the public, and it is apparent that such an offer would appeal to many voters and would tend to gain their favor for the candidate who makes such an offer. The result is, as the courts have pointed out, that if such offers were permitted, it would tend to put an office up at sale for the lowest bidder. A person of means, having some personal and perhaps ulterior motive for seeking said office, might secure his election through such an offer, defeating a better qualified candidate, who, for lack of a sufficient private income, could not afford to meet the offer. Thus, the object of an election, which should be to choose public servants on the basis of their merits regardless of wealth or other irrelevant considerations, would be frustrated. Hence, it is well settled by the courts that an offer by a candidate during an election campaign to serve for less than the prescribed salary is not only a violation of the election bribery statutes but is contrary to public policy.

Were 1979 AB 353 to become law, it could be argued that it constitutes a statutory exception to the election bribery laws. But such an enactment would put public office up for auction, and it would discriminate against poorer candidates. As our supreme court stated in *State ex rel. Newell v. Purdy*, 36 Wis. at 225:

So far as we are advised, no judicial tribunal has given any countenance whatever to any practice or act which tends in that direction, but the courts have steadily held that popular elections must be kept free from any taint of corruption, and from all improper or unlawful influences whatever. We have no disposition to depart from this line of adjudication. On the contrary, were the opposite doctrine asserted in any of the cases, we should not follow them. We would not hold that a man may buy a public office ... just as he would buy a horse at auction, that is, by offering to pay more for it than any other person is willing to pay. We can never give the sanction of this court to a doctrine so pernicious.

The second question asks whether such a bill, if enacted, would be unconstitutional. I believe that it would violate at least one constitutional provision, namely, that the Legislature cannot impose additional qualifications for office.

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Wisconsin Constitution art. IV, sec. 6, dealing with the qualifications of legislators, provides: "No person shall be eligible to the legislature who shall not have resided one year within the state, and be a qualified elector in the district which he may be chosen to represent." The Legislature cannot add to these qualifications. *See State ex rel. La Follette v. Kohler*, 200 Wis. 518, 553, 228 N.W. 895 (1930). Following this principle, I have said that requiring a candidate to be a district resident at the time he files his or her nomination papers, rather than at the time of election, imposes an unconstitutional qualification for office. 65 Op. Att'y Gen. 159 (1976).

Unquestionably 1979 AB 353, by requiring candidates for the Legislature to file their salary declaration along with their nomination papers, imposes a qualification for office. This additional requirement is prohibited unless it comes within the exceptions stated by the supreme court. In *Kohler* the court upheld requiring candidates to comply with the Corrupt Practices Act on the ground that its violation negated the election itself. In *State ex rel. Van Alstine v. Frear*, 142 Wis. 320, 125 N.W. 961 (1910), the court upheld a requirement that candidates declare whether they are qualified to serve on the ground that the voter's ballot would be useless if the candidate could not serve. In each case, preservation of the integrity of the electoral process was at stake. Here, the required declaration would not assure the integrity of the election process itself. Accordingly, 1979 AB 353 comes within no exception to the rule that the Legislature cannot impose additional qualifications for office.

There may be additional constitutional infirmities. For example, under the fourteenth amendment to the United States Constitution the state cannot deny the equal protection of the laws. 1979 AB 353 requires only candidates for the Legislature to make a salary declaration. I am at a loss to fathom what rational basis there might be for singling out state legislators. Further, since this bill requires what always has been interpreted to be election bribery, if enacted the bill could be independently vulnerable as destructive of the integrity of the electoral process and not rationally related to any permissible legislative objective.

Sincerely yours,  
BRONSON C. La FOLLETTE  
Attorney General

Caption:

1979 AB 353, requiring candidates for the Legislature to declare whether they will receive a lower salary, conflicts with election bribery laws, sec. 12.11, Stats. Further, if enacted, it would violate the constitutional principle that the Legislature cannot impose additional qualifications to office. Finally, its constitutionality under the fourteenth amendment to the United States Constitution is subject to question.

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COMMUNICATIONS

Notice of Intent received from Department of Natural Resources to apply for Federal Assistance for Solid Waste Program Grant: Hazardous Waste Management and RCRA State Plan.

Comments due by August 16, 1979.

To committee on Environmental Resources.

Notice of Intent received from Council on Criminal Justice to apply for Federal Assistance for Supplemental 1979 Part B Planning Grant.

Comments due by August 24, 1979.

To committee on Criminal Justice and Public Safety.

Notice of Intent received from Department of Industry, Labor and Human Relations to apply for Federal Assistance for Fiscal Year 1980 CETA Plan.

Comments due by August 24, 1979.

To committee on Labor.

Notice of Intent received from Council on Criminal Justice to apply for Federal Assistance for 1980 Criminal Justice Improvement Plan.

Comments due by August 26, 1979.

To committee on Criminal Justice and Public Safety.



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August 1, 1979

Mr. Marcel Dandeneau  
Assembly Chief Clerk  
329, West, State Capitol  
Madison, WI 53702

Dear Mr. Dandeneau:

I am pleased to transmit to you the following Reports to the 1979 Legislature on legislation introduced by the Legislative Council:

RL 79-20 Legislation Relating to Juvenile Corrections  
(A.B. 658 and A.B. 659)

RL 79-21 Legislation Relating to Changing Enrollments

I would appreciate your including this letter in the Journal for the information of the membership. Additional copies of these Reports are available, on request, in the Legislative Council offices, Room 147 North, State Capitol.

Thank you.

Cordially,  
BONNIE REESE  
Executive Secretary

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SPEAKER'S APPOINTMENTS

August 8, 1979

Mr. Marcel Dandeneau  
Assembly Chief Clerk  
State Capitol, 329-West  
Madison, WI 53702

Dear Marcel:

This is to inform you that pursuant to the authority vested in me by Section 14.017 (1)(c) of the Wisconsin Statutes, I have appointed Representative Pat Smith to the Council on Highway Safety to replace Representative Kevin Soucie who has resigned from the Council.

ED JACKAMONIS  
Speaker