

JOURNAL OF THE SENATE [April 19, 1979]

STATE OF WISCONSIN

**Senate Journal**

**Eighty-Fourth Regular Session**

---

THURSDAY, April 19, 1979.

10:00 A.M.

The senate met.

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

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

Senators Adelman, Bablitch, Bear, Berger, Bidwell, Braun, Chilsen, Cullen, Flynn, Frank, Goyke, Harnisch, Johnston, Kleczka, Kreul, Krueger, Lasee, Lorge, McCallum, Maurer, Moody, Murphy, Offner, Opitz, Radosevich, Risser, Roshell, Strohl, Swan, Theno, Thompson and Van Sistine -- 32.

Absent -- None.

Absent with leave -- None.

The senate stood for the prayer which was offered by Father Thomas Coyle of St. Paul's Catholic Church, University of Wisconsin Center Chapel of Madison.

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

---

INTRODUCTION OF BILLS

Read first time and referred:

**Senate Bill 180**

Relating to the due dates for the filing of annual accounts by guardians.

By Senator Frank, by request of Mr. Ralph H. Schultz, Milwaukee.

To committee on Judiciary and Consumer Affairs.

**Senate Bill 181**

Relating to the determination of brain death.

By Legislative Council.

To committee on Human Services.

**Senate Bill 182**

Relating to adjusting capital gains basis for inflation.

By Senators McCallum, Johnston, Lorge, Bidwell, Krueger, Murphy, Roshell, Opitz, Bear, Lasee, Chilsen and Kreul; cosponsored by Representatives R. Travis, Barry, Matty, Thompson, Luckhardt, Radtke, Lorman, Harsdorf, Hopkins, Omernick, Prosser, Donoghue, Snyder, Dilweg and Andrea.

To committee on Education and Revenue.

Senator Berger asked unanimous consent that **Senate Bill 182** be withdrawn from committee on Education and Revenue and referred to Joint Survey Committee on Tax Exemptions.

Senator Bablitch objected.

By request of Senator Bablitch, with unanimous consent, **Senate Bill 182** was withdrawn from committee on Education and Revenue and referred to committee on Senate Organization.

**Senate Bill 183**

Relating to the taxation of capital gains.

By Senators McCallum, Johnston, Lorge, Bidwell, Murphy, Krueger, Roshell, Opitz, Van Sistine, Bear, Lasee, Chilsen and Kreul; cosponsored by Representatives R. Travis, Radtke, Matty, Merkt, Schmidt, Laatsch, Paulson, Harsdorf, Young, Luckhardt, Lorman, Harer, Hopkins, Omernick, Donoghue, Klicka, Snyder, Dilweg and Andrea.

To committee on Education and Revenue.

By request of Senator Berger, with unanimous consent, **Senate Bill 183** was withdrawn from committee on Education and Revenue and referred to committee on Senate Organization.

By request of Senator Maurer, with unanimous consent, the Senate recessed until 10:21 A.M.

10:07 A.M.

---

RECESS

10:21 A.M.

The senate reconvened.

---

COMMITTEE REPORTS

The committee on Human Services reports and recommends for introduction:

**Senate Bill 184**

Relating to emergency assistance to dependent persons.

Introduction:

Ayes, 3 -- Senators Thompson, Strohl, Cullen;

Noes, 0 -- None.

Read first time and referred to committee on Human Services.

**Senate Bill 185**

Relating to state payment for the care of patients at county hospitals instead of at the university of Wisconsin hospital and clinics, and making an appropriation.

By request of Milwaukee County.

Introduction:

Ayes, 3 -- Senators Thompson, Strohl, Cullen;

Noes, 0 -- None.

Read first time and referred to committee on Human Services

CARL W. THOMPSON

Chair

The committee on Human Services reports and recommends:

**Senate Bill 62**

Relating to adding 2 dental hygienists to the dentistry examining board.

Adoption of senate amendment 3:

Ayes, 4 -- Senators Thompson, Strohl, Radosevich and Cullen;

Noes, 0 -- None.

Passage as amended:

Ayes, 4 -- Senators Thompson, Strohl, Radosevich and Cullen;

Noes, 0 -- None.

JOURNAL OF THE SENATE [April 19, 1979]

**Senate Bill 75**

Relating to extension of state medical malpractice plan to podiatrists.

Passage:

Ayes, 4 -- Senators Thompson, Strohl, Radosevich and Cullen;  
Noes, 0 -- None.

**Senate Bill 76**

Relating to licensing and regulation of social workers, creating a social workers council, creating a social worker-client privilege, making an appropriation, granting rule-making authority and providing penalties.

Passage:

Ayes, 3 -- Senators Thompson, Cullen and Strohl;  
Noes, 1 -- Senator Radosevich.

**Senate Bill 80**

Relating to regulating smoking in public conveyances and places covered and providing a penalty.

Introduction and adoption of of senate substitute amendment 1:

Ayes, 3 -- Senators Thompson, Strohl and Radosevich;  
Noes, 1 -- Senator Cullen.

Passage as amended:

Ayes, 3 -- Senators Thompson, Strohl and Radosevich;  
Noes, 1 -- Senator Cullen.

CARL W. THOMPSON  
Chair

The committee on Senate Organization reports and recommends for introduction:

**Senate Resolution 4**

Relating to the number of members on senate standing committees.

Introduction:

Ayes, 5 -- Senators Risser, Bablitch, Flynn, Krueger and Murphy;  
Noes, 0 -- None.

FRED A. RISSER  
Chair

By request of Senator Bablitch, with unanimous consent, **Senate Resolution 4** was taken up at this time.

**Senate Resolution 4**

Relating to the number of members on senate standing committees.

Read.

The question was: Adoption of **Senate Resolution 4**?

The ayes and noes were required and the vote was: ayes, 32; noes, 0; absent or not voting, 0; as follows:

**Ayes --** Senators Adelman, Bablitch, Bear, Berger, Bidwell, Braun, Chilsen, Cullen, Flynn, Frank, Goyke, Harnisch, Johnston, Kleczka, Kreul, Krueger, Lasee, Lorge, McCallum, Maurer, Moody, Murphy, Offner, Opitz, Radosevich, Risser, Roshell, Strohl, Swan, Theno, Thompson and Van Sistine -- 32.

**Noes --** None.

**Absent or not voting --** None.

So the resolution was adopted.

The committee on Senate Organization, acting under Senate Rule 20(1)(a), reports and recommends the following nominations to committee for appointment by the Senate:

To the committee on Governmental & Veterans Affairs, Senator Johnston

To the committee on Natural Resources & Tourism, Senator Opitz

To the committee on Human Services, Senator Opitz, to replace Senator Petri, resigned 4-9-79

To the Joint Survey Committee on Tax Exemptions, Senator Johnston, to replace Senator Petri, resigned 4-9-79

To the Audit Committee, Senator Chilsen, to replace Senator Petri, resigned 4-9-79

FRED A. RISSER

Chair

The question was: Shall the committee appointments be adopted?

Adopted.

---

CALENDAR OF APRIL 19

HANEY, ANN, of Neenah, as Secretary of the Department of Regulation and Licensing, to succeed Susan Mitchell, to serve for the term ending March 1, 1983.

Read.

MUSOLF, MARK E., of Madison, as Secretary of the Department of Revenue, to succeed Dennis J. Conta, to serve for the term ending at the pleasure of the Governor.

Read.

Senator Bablitch asked unanimous consent that the appointments of Ann Haney and Mark Musolf be referred to committee on Senate Organization.

Senator McCallum objected.

By request of Senator McCallum, with unanimous consent, he withdrew his objection.

By request of Senator Bablitch, with unanimous consent, the appointments were referred to committee on Senate Organization.

REPORT OF JOINT SURVEY COMMITTEE ON  
DEBT MANAGEMENT

Appendix to **Senate Bill 79**

This report has been received in the Senate Chief Clerk's office and copies may be obtained in the Document room.

FRED A. RISSER  
Co-chair

GERVASE A. HEPHNER  
Co-chair

---

MESSAGE FROM THE ASSEMBLY

By Marcel Dandeneau, chief clerk.

Mr. President:

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

**Assembly Bill 36**

JOURNAL OF THE SENATE [April 19, 1979]

**Assembly Bill 64**  
**Assembly Bill 69**  
**Assembly Bill 170**  
**Assembly Bill 181**  
**Assembly Bill 49**  
**Assembly Bill 50**

Adopted and asks concurrence in:

**Assembly Joint Resolution 52**

Concurred in:

**Senate Bill 51**

---

MESSAGE FROM THE ASSEMBLY CONSIDERED

**Assembly Bill 36**

Relating to liability insurance for motor-driven cycles.

By Representatives Dorff, Behnke, Andrea, Duren and Soucie.

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

**Assembly Bill 64**

Relating to limitation of the defense of noncooperation of the insured under a motor vehicle insurance policy.

By Representatives Czerwinski and Hauke.

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

**Assembly Bill 69**

Relating to permitting a savings and loan association to produce its books as evidence of transactions.

By Representatives Roberts and Hauke, by request of Savings League of Wisconsin.

Read first time and referred to committee on Aging, Business and Financial Institutions and Transportation.

**Assembly Bill 170**

Relating to raising the maximum fee which may be charged for a fermented malt beverage and intoxicating liquor "operator's license".

By Representatives Young, Dorff, Gagin, Prosser, Klicka, Quackenbush, Lorman, Donoghue, Ellis and Conradt, co-sponsored by Senator Murphy.

Read first time and referred to committee on Governmental and Veterans Affairs.

## JOURNAL OF THE SENATE [April 19, 1979]

By request of Senator Cullen, with unanimous consent, **Assembly Bill 170** was referred to committee on Senate Organization.

### **Assembly Bill 181**

Relating to the rate of the unemployment compensation solvency tax to be levied against certain employers.

By Joint Committee on Legislative Audit.

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

### **Assembly Bill 49**

Relating to the definition of intimate parts relating to sexual assault.

By Representatives Ulichny, Wahner, Rutkowski and Donoghue, co-sponsored by Senator Bablitch.

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

### **Assembly Bill 50**

Relating to loss of a sexual organ as a result of a sexual assault and charging a penalty.

By Representatives Ulichny, Wahner, Munts, Schmidt, Rutkowski and Donoghue, co-sponsored by Senator Bablitch.

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

### **Assembly Joint Resolution 52**

Proclaiming the week of April 29 to May 5, 1979, as "Wisconsin youth conservation employment week".

By Representatives Murray, Lallensack, Barry, Munts, Flintrop, Hasenohrl, Smith, Wood, Behnke, Wagner, Ulichny, Soucie, Kincaid, Tesmer, Lee, Barczak, Everson, Jackamonis, McClain, Plewa, Becker, Duren, Otte, Gerlach, Lingren, Wahner, Lorman, Rogers, Swoboda, Byers, Thompson, Tregoning, Donoghue, Matty, Metz, Schmidt, DeLong, Dilweg, Andrea and Menos, co-sponsored by Senators Van Sistine, Maurer, Krueger and Roshell.

Read and referred to committee on Senate Organization.

---

## CALENDAR OF APRIL 19

### **Senate Bill 17**

Relating to assessment appeals in counties with a county assessor system.

Read a second time.

## JOURNAL OF THE SENATE [April 19, 1979]

By request of Senator Kleczka, with unanimous consent, **Senate Bill 17** was referred to the joint committee on Finance.

By request of Senator Kleczka, with unanimous consent, **Senate Bill 17** was withdrawn from the joint committee on Finance and considered for action at this time.

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 17**

Read a third time and passed.

By request of Senator Bablitch, with unanimous consent, the rules were suspended and **Assembly Joint Resolution 52** was withdrawn from committee on Senate Organization and taken up at this time.

### **Assembly Joint Resolution 52**

Proclaiming the week of April 29 to May 5, 1979, as "Wisconsin youth conservation employment week".

Read.

Concurred in.

### **Senate Bill 24**

Relating to increasing the state life insurance fund policy limit.

Read a second time.

Senate amendment 1 offered by Senator Moody.

Senator Kleczka asked unanimous consent that **Senate Bill 24** be referred to joint committee on Finance.

Senator Braun objected.

Senator Kleczka moved that **Senate Bill 24** be referred to joint committee on Finance.

The motion prevailed.

### **Senate Bill 30**

Relating to the insured's right to choose physicians' or chiropractors' services for covered sickness or injury.

Read a second time.

By request of Senator Kleczka, with unanimous consent, **Senate Bill 30** was referred to joint committee on Finance.

JOURNAL OF THE SENATE [April 19, 1979]

**Senate Bill 31**

Relating to optional additional group life insurance coverage for certain local government employes.

Read a second time.

By request of Senator Frank, with unanimous consent, **Senate Bill 31** was referred to committee on Insurance and Utilities.

**Senate Bill 43**

An act to appropriate \$6,475.90 from the general fund for payment of a claim made by Alvin J. Karetski against the state.

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 43**

Read a third time.

The ayes and noes were required and the vote was: ayes, 31; noes, 1; absent or not voting, 0; as follows:

Ayes -- Senators Adelman, Bablitch, Bear, Berger, Bidwell, Braun, Chilsen, Cullen, Flynn, Frank, Goyke, Harnisch, Johnston, Kleczka, Kreul, Krueger, Lasee, Lorge, McCallum, Maurer, Moody, Murphy, Offner, Opitz, Radosevich, Risser, Roshell, Strohl, Theno, Thompson and Van Sistine -- 31.

Noes -- Senator Swan -- 1.

Absent or not voting -- None.

So the bill passed.

**Senate Bill 48**

An act to appropriate \$3,076.11 from the general fund for payment of a claim made by Racine county against the state.

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 48**

Read a third time.

The ayes and noes were required and the vote was: ayes, 32; noes, 0; absent or not voting, 0; as follows:

Ayes -- Senators Adelman, Bablitch, Bear, Berger, Bidwell, Braun, Chilsen, Cullen, Flynn, Frank, Goyke, Harnisch, Johnston, Kleczka, Kreul, Krueger, Lasee, Lorge, McCallum, Maurer, Moody,

JOURNAL OF THE SENATE [April 19, 1979]

Murphy, Offner, Opitz, Radosevich, Risser, Roshell, Strohl, Swan, Theno, Thompson and Van Sistine -- 32.

Noes -- None.

Absent or not voting -- None.

So the bill passed.

**Senate Bill 61**

Relating to regulation of acquisition of control of or merger with domestic insurers or insurance holding companies.

Read a second time.

By request of Senator Kleczka, with unanimous consent, **Senate Bill 61** was referred to the joint committee on Finance.

By request of Senator Kleczka, with unanimous consent, **Senate Bill 61** was withdrawn from the joint committee on Finance and considered for action at this time.

Read a second time.

The question was: Adoption of senate substitute amendment 1?  
Adopted.

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 61**

Read a third time and passed.

**Senate Bill 125**

Relating to providing financial assistance to cities, counties, towns and villages for costs of snow removal and making an appropriation.

Read a second time.

By request of Senator Kleczka, with unanimous consent, **Senate Bill 125** was referred to joint committee on Finance.

**Senate Bill 129**

An act to appropriate \$18,018.33 from the general fund for payment of 2 claims made by Dodge county against the state.

Read a second time.

Ordered to a third reading.

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

**Senate Bill 129**

JOURNAL OF THE SENATE [April 19, 1979]

Read a third time.

The ayes and noes were required and the vote was: ayes, 30; noes, 0; absent or not voting, 2; as follows:

Ayes -- Senators Adelman, Bablitch, Bear, Berger, Bidwell, Chilsen, Cullen, Flynn, Frank, Goyke, Harnisch, Johnston, Kleczka, Kreul, Krueger, Lasee, Lorge, McCallum, Maurer, Murphy, Offner, Opitz, Radosevich, Risser, Roshell, Strohl, Swan, Theno, Thompson and Van Sistine -- 30.

Noes -- None.

Absent or not voting -- Senators Braun and Moody -- 2.

So the bill passed.

**Senate Bill 130**

An act to appropriate \$3,398.74 from the transportation fund for payment of a claim made by the Wisconsin Telephone Company against the state.

Read a second time.

Ordered to a third reading.

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

**Senate Bill 130**

Read a third time.

The ayes and noes were required and the vote was: ayes, 31; noes, 1; absent or not voting, 0; as follows:

Ayes -- Senators Adelman, Bablitch, Bear, Bidwell, Braun, Chilsen, Cullen, Flynn, Frank, Goyke, Harnisch, Johnston, Kleczka, Kreul, Krueger, Lasee, Lorge, McCallum, Maurer, Moody, Murphy, Offner, Opitz, Radosevich, Risser, Roshell, Strohl, Swan, Theno, Thompson and Van Sistine -- 31.

Noes -- Senator Berger -- 1.

Absent or not voting -- None.

So the bill passed.

The president of the senate in the chair.

11:20 A.M.

**Senate Bill 131**

An act to appropriate \$4,362.47 from the general fund for payment of a claim made by Melvin Jarchow against the state.

Read a second time.

Senator Cullen moved indefinite postponement.

## JOURNAL OF THE SENATE [April 19, 1979]

Senator Cullen asked unanimous consent, that **Senate Bill 131** be referred to joint committee on Finance.

Senator Kleczka objected.

Senator Cullen asked unanimous consent, that **Senate Bill 131** be referred to joint committee on Finance.

Senator Kleczka objected.

By request of Senator Bablitch, with unanimous consent, **Senate Bill 131** was laid on the table.

### **Assembly Joint Resolution 44**

Urging congress and the President to restrict cheese imports.

Read.

Concurred in.

By request of Senator Bablitch, with unanimous consent, all action was ordered immediately messaged.

By request of Senator Bablitch, with unanimous consent, the Senate returned to the fifth order of business.

---

## RULING OF THE CHAIR

The State of Wisconsin  
Office of the Lieutenant Governor

Ruling of the Chair on the Point of Order raised by Senator Bablitch on March 1, 1979, regarding (1) the legality of the Lieutenant Governor sitting as presiding Officer of the Senate on February 27, 1979, and (2) the casting of a tie-breaking vote by the Lieutenant Governor at a time when it is conceded that Governor Lee Sherman Dreyfus was out of the state.

On March 1, 1979, Senator Bablitch raised a point of order that the tie-breaking vote by Lieutenant Governor Russell Olson on February 27, 1979, re: indefinite postponement of Senate Bill 5, as shown on page 183 of the Senate Journal, was contrary to Senate Rule 2 and Article IV and Article V of the Wisconsin Constitution, in that at the time the vote was cast, Governor Lee Sherman Dreyfus was out of the state; that the said vote therefore is null and void, and the question of indefinite postponement, therefore, should have failed on a 15-15 tie vote.

Pursuant to the above point of order being raised by Senator Bablitch, the Chair invited debate and discussion, following which, the Chair took same under advisement. Chapter 2, Senate Rule 7

## JOURNAL OF THE SENATE [April 19, 1979]

(3) of the 1979 Senate Rules provides as follows: "Whenever the president finds it necessary to take a point of order under advisement in order to consult all sources of parliamentary law and practice available, the president shall submit the decision in writing stating the source consulted and the reasons for the decision. The text of the president's decision shall be spread upon the journal."

Senator Bablitch directs the Chair to three sources of authority in support of his point of order. They are as follows: (1) Senate Rule 2; (2) Section 7, Article V of the Wisconsin Constitution; (3) Section 9, Article IV of the Wisconsin Constitution.

Mason's Manual of Legislative Procedure on page 32 recognizes that the Rules of Legislative Procedure are derived from seven principal sources: (1) Constitutional Rules; (2) Statutory Rules or Charter Provisions; (3) Adopted Rules; (4) Judicial Decisions; (5) Adopted Parliamentary Authority; (6) Parliamentary Law; and (7) Customs and Usages. Let us, therefore, review the exact language of the authorities cited by Senator Bablitch.

Chapter 1, Senate Rule 2 (1), 1979 Senate Rules: The Senate shall designate one of its members to serve as president pro tempore for the legislative Biennium. The president pro tempore shall act as president of the Senate whenever the lieutenant governor shall not attend or shall act as Governor, as provided in Section 9 of Article IV of the constitution and as further set forth in Section 13.13 (3) of the Statutes.

Section 7, Article V of the Wisconsin Constitution: In case of the impeachment of the Governor, or his removal from office, death, inability from mental or physical disease, resignation or absence from the state, the powers and duties of the office shall devolve upon the Lieutenant Governor for the residue of the term or until the Governor, absent or impeached, shall have returned, or the disability shall cease.

Section 9, Article IV of the Wisconsin Constitution: Each house shall choose its own officers, and the Senate shall choose a temporary President when the Lieutenant Governor shall not attend as President, or shall act as Governor.

Senator Bablitch interprets the above cited authorities in urging acceptance of the proposition that whenever the Governor is absent from the State, the Lieutenant Governor becomes Acting Governor, and therefore, shall not preside over the Senate as President. That interpretation and argument would then lead to the logical conclusion that the Lieutenant Governor on February 27, 1979, could not have

## JOURNAL OF THE SENATE [April 19, 1979]

lawfully cast a tie breaking vote on the question of indefinite postponement of Senate Bill 5, and thus the question of indefinite postponement should have failed on a 15-15 tie vote.

The Chair concurs with the proposition that the language contained in Section 7, Article V of the Wisconsin Constitution is clear in providing that whenever the Governor is absent from the State, that the powers and duties of that office shall devolve upon the Lieutenant Governor, and that during such time the Lieutenant Governor becomes the Acting Governor of the State. However, the Chair fails to find explicit language either in the Senate Rules or the Wisconsin Constitution to support the balance of Senator Bablitch's contention that when the Lieutenant Governor becomes the Acting Governor of the State, he shall not attend as President of the Senate. Simply stated, neither the Senate Rules nor the applicable sections of the Wisconsin Constitution affirmatively prohibit an Acting Governor, who still possesses the statutory powers and duties of Lieutenant Governor, from attending as President of the Senate. In addition to the foregoing, the Chair notes that the Journal of Senate Proceedings for February 27, 1979, contains no entry of objection to the Lieutenant Governor presiding as President of the Senate. Therefore, it is the position of the Chair that in lieu of explicit language in the Wisconsin Constitution or the Senate Rules prohibiting a Lieutenant Governor upon whom has devolved the powers and duties of Governor, from presiding as President of the Senate, it is necessary to examine other sources of rules of procedure, such as those outlined by Mason in his Manual of Legislative Procedure.

In order, therefore, to properly rule on the point of order raised, it is necessary to explore in detail the accumulated parliamentary law of the Senate as well as its customs and usages. Mason's Legislative Manual, Section 35 defines parliamentary law as consisting of the recognized rules, precedents and usages of legislative and administrative bodies by which their procedure is regulated. According to Section 38 of Mason's Legislative Manual: "parliamentary law is drawn mainly from five sources: (1) Decisions of bodies on appeal; (2) Decisions of presiding officers on points of order; (3) Decisions of courts; (4) Writings of authorities on parliamentary law; and (5) Customs and usages."

It is apparent, therefore, that in the absence of explicit and controlling language in the form of constitutional mandates, statutes, or formal and written adopted rules of the body, one must turn for direction to precedents established in the Senate with respect to the same or similar questions of procedure raised in the past. Section 39, entitled "Precedents and Usages" in Mason's Legislative Manual

## JOURNAL OF THE SENATE [April 19, 1979]

provides as follows: "When in a deliberative body a certain mode of procedure has been adopted in any case it becomes a precedent for its government in every case thereafter of a similar character; thus, in time a succession of precedents is adopted, forming together a regular system of procedure, known as parliamentary law, and which, when once established, is binding upon the body."

An examination of the Journal of the Senate reveal that the question raised by Senator Bablitch on March 1, 1979, was confronted and dealt with by the Senate on March 26, 1976. Specifically, the Journal reveals that Senator Chilsen asked unanimous consent that the record of proceedings of March 25, 1976, be expunged as it related to Senate Bill 500 because the Lieutenant Governor should not have been presiding, pursuant to Senate Rule 2 (1). A further examination of the record indicates that, indeed, the fact situation culminating in the raising of a point of order by Senator Bablitch on March 1, 1979, is identical to the fact situation which led to the motion for expungement raised by Senator Chilsen on March 26, 1976. The Chair, in preparation of this written opinion, has had the benefit of listening to the tape recorded proceedings of the Senate on March 1, 1979, and the arguments of the opponents and proponents of the point of order raised. The Chair must comment at this juncture that it finds no merit in Senator Bablitch's contention that the proceedings of March 26, 1976, should have no precedent value because the issue was not presented to the Senate for its deliberation in the form of a point of order. In support of that no merit finding, I direct the Senate's attention to page 54 of Mason's Legislative Manual:

"Precedents, as distinguished from usages, are the decisions made by the presiding officer, or by the body upon appeal, when a question concerning a practice or point of procedure has been raised, as by a point of order. A not inconsiderable part of parliamentary law is based upon the established usages of legislative bodies. The knowledge of the usages and customs of a legislative body are drawn from treatises on parliamentary practice, from the records of the body, insofar as the usages can be ascertained from them, and from the personal knowledge of the presiding officer and members."

According to the Journal of March 26, 1976, Senator Chilsen moved that the record of Senate Bill 500 be expunged from the Journal of March 25, 1976. It is furthermore conceded that the motion for expungement was premised squarely on the fact that then Lieutenant Governor Martin J. Schreiber, presiding as President of the Senate, at a time when it was acknowledged that then Governor

## JOURNAL OF THE SENATE [April 19, 1979]

Lucey was out of the State, cast a tie breaking vote on Senate Bill 500. Thus, the question raised by Senator Bablitch's point of order on March 1, 1979, was squarely and in its entirety before this body for its determination on March 26, 1976. The Senate, on that date, defeated Senator Chilsen's motion to expunge, 17-13. It is therefore, the position of the Chair that this body clearly expressed its will on March 26, 1976, and thereby, established the precedent that the Lieutenant Governor, upon whom has devolved the powers and duties of Governor, by virtue of the Governor's absence from the State, may continue to attend upon and preside over the Senate as its President. Section 39, Para. 5, of Mason's Legislative Manual further supports the position of the Chair: "When there is an established practice in a deliberative body, or there has been a previous decision on a question, the practice or precedent may be said to govern."

For all the reasons cited above, and supported by the parliamentary practice and procedures established in the Wisconsin State Senate, the Chair rules that the point of order raised by Senator Bablitch on March 1, 1979, is not well taken. The Chair further rules that I, as Lieutenant Governor of the State of Wisconsin, was properly and lawfully presiding officer of the Wisconsin State Senate on February 27, 1979, and that I was procedurally empowered to cast the tie breaking vote on the question of indefinite postponement of Senate Bill 5. Accordingly, the Journal of the Senate for February 27, 1979, reflecting the results of that vote, is hereby declared true and correct.

Senator Bablitch appealed the ruling of the chair and, with unanimous consent, the appeal was laid on the table.

Senator Braun asked to be recorded as voting aye on passage of **Senate Bill 129**.

Senator Bablitch objected.

By request of Senator Bablitch, with unanimous consent, Senator Braun was recorded as voting aye on passage of **Senate Bill 129**.

Senator Van Sistine asked unanimous consent that **Senate Bill 121** be withdrawn from committee on Agriculture, Labor and Local Affairs and referred to joint committee on Finance.

Senator Kleczka objected.

Senator Van Sistine moved that **Senate Bill 121** be withdrawn from committee on Agriculture, Labor and Local Affairs and referred to joint committee on Finance.

## JOURNAL OF THE SENATE [April 19, 1979]

By request of Senator Bablitch with unanimous consent, the senate returned to the eighth order of business.

---

### MOTIONS

Senator Van Sistine moved that **Senate Bill 121** be withdrawn from committee on Agriculture, Labor and Local Affairs and referred to joint committee on Finance.

The question was: Shall **Senate Bill 121** be withdrawn from committee on Agriculture, Labor and Local Affairs and referred to joint committee on Finance?

The ayes and noes were demanded and the vote was: ayes, 13; noes, 19; absent or not voting, 0; as follows:

Ayes -- Senators Bablitch, Bidwell, Cullen, Frank, Goyke, Harnisch, Kreul, Moody, Murphy, Risser, Roshell, Thompson and Van Sistine -- 13.

Noes -- Senators Adelman, Bear, Berger, Braun, Chilsen, Flynn, Johnston, Kleczka, Krueger, Lasee, Lorge, McCallum, Maurer, Offner, Opitz, Radosevich, Strohl, Swan and Theno -- 19.

Absent or not voting -- None.

So the motion did not prevail.

By request of Senator Bablitch, with unanimous consent, the senate returned to the third and seventh orders of business.

---

### INTRODUCTION OF BILLS

Read first time and referred:

#### **Senate Bill 186**

Relating to the date of annual school district meetings.

By Senators Adelman, Harnisch, Braun, Strohl and Moody.

To committee on Education and Revenue.

#### **Senate Bill 187**

Relating to the use of certified mail for certain tax notices.

By Senators Theno, Krueger, Harnisch, Strohl, Murphy, Moody, Berger, Braun, Kreul, Chilsen and Lorge; cosponsored by Representatives Kincaid, Kedrowski and Gunderson.

To committee on Education and Revenue.

JOURNAL OF THE SENATE [April 19, 1979]

MESSAGE FROM THE ASSEMBLY

By Marcel Dandeneau, chief clerk.

Mr. President:

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

**Assembly Bill 3**  
**Assembly Bill 176**  
**Assembly Bill 166**  
**Assembly Bill 85**

MESSAGE FROM THE ASSEMBLY CONSIDERED

**Assembly Bill 3**

Relating to use of a foreign language for instruction in elementary schools.

By Representative Wahner.

Read first time and referred to committee on Education and Revenue.

**Assembly Bill 176**

Relating to the duties of the state superintendent of public instruction in regard to setting standards of attainment for the licensing and certification of teachers and school nurses.

By Representatives Flintrop, DeLong, Coggs, Goodrich, Broydrick, Potter, Quackenbush, Rogers and Becker.

Read first time and referred to committee on Education and Revenue.

**Assembly Bill 166**

Relating to authorization to call special elections to fill certain anticipated legislative vacancies.

By Representatives Otte, Potter, Rutkowski, D. Travis, Ladwig and Ferrall, co-sponsored by Senators Adelman and Flynn.

Read first time and referred to committee on Governmental and Veterans Affairs.

**Assembly Bill 85**

Relating to measurement of loss for property insurance.

By Representatives Kincaid, Menos, Lallensack, Wahner, Rogers, Hephner, Luckhardt and Behnke, co-sponsored by Senator Krueger.

**JOURNAL OF THE SENATE [April 19, 1979]**

**Read first time and referred to committee on Insurance and Utilities.**

---

**AMENDMENTS OFFERED**

**Senate amendment 4 to Senate Bill 62 by Senator Johnston.**

**Senate amendment 1 to Senate Bill 121 by Senator Van Sistine.**

**Senate substitute amendment 1 to Senate Bill 150 by Senator Offner.**

**Upon motion of Senator Bablitch the senate adjourned until 10:00 A.M. Tuesday, April 24.**

**12:07 P.M.**

---

**CHIEF CLERK'S CORRECTION**

**Suggested by Legislative Reference Bureau**

**Senate Bill 177**

- 1. On page 27, line 11, after "SECTION" insert "49m."**
- 2. On page 28, line 21, after "SECTION" insert "51m."**