

STATE OF WISCONSIN

Senate Journal

Eighty-Fifth Regular Session

THURSDAY, June 11, 1981.

9:00 A.M.

The senate met.

The senate was called to order by the president of the senate.

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

Senators Adelman, Bablitch, Berger, Bidwell, Braun, Chilsen, Cullen, Engeleiter, Flynn, Frank, George, Goyke, Hanaway, Harnisch, Harsdorf, Johnston, Kleczka, Kreul, Krueger, Lasee, Lorge, Lorman, McCallum, Maurer, Moody, Offner, Opitz, Risser, Roshell, Strohl, Theno, Thompson and Van Sistine -- 33.

Absent -- None.

Absent with leave -- None.

The senate stood for the prayer which was offered by Pastor Gary Brandenburg of Hilldale Assembly of God Church, Madison.

The senate remained standing and Senator Opitz 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 446

Relating to the reassignment of functions within the department of regulation of licensing and its attached examining boards and making appropriations.

By Senators Goyke and Krueger; cosponsored by Representatives Barczak and Quackenbush.

To committee on Human Services.

Senate Bill 447

Relating to increasing an appropriation for the purchase of a weed cutter for the control of aquatic weeds in Lake Lorraine and other lakes in this state.

By Senator Cullen, by request of Arthur Nuetzel, Lake Lorraine, Whitewater.

To committee on Agriculture and Natural Resources.

Senate Bill 448

Relating to the sale of raw milk and granting rule-making authority.

By Senators Cullen and Harsdorf; cosponsored by Representatives Porter and DeLong, by request of Arthur Johnston, Lake Geneva.

To committee on Agriculture and Natural Resources.

COMMITTEE REPORTS

The joint committee for Review of Administrative Rules reports and recommends for introduction:

Senate Bill 449

Relating to residency requirements for state employes in the classified service.

Introduction:

Ayes, 10 -- Senators Berger, Goyke, Harnisch, George and Kreul, Representatives Rogers, Wagner, Helbach, Crawford and Thompson;

Noes, 0 -- None.

Read first time and referred to committee on Labor, Government, Veterans Affairs and Tourism.

Senate Bill 450

Relating to increasing the application period of, and providing for the extension of, emergency rules.

Introduction:

Ayes, 10 -- Senators Berger, Goyke, Harnisch, George and Kreul, Representatives Rogers, Wagner, Helbach, Crawford and Thompson;

JOURNAL OF THE SENATE [June 11, 1981]

Noes, 0 -- None.

Read first time and referred to joint committee for Review of Administrative Rules.

DAVID G. BERGER
Co-Chair

WILLIAM J. ROGERS
Co-Chair

The joint committee on Employment Relations reports and recommends for introduction:

Senate Bill 451

An act to ratify the agreement negotiated between the state of Wisconsin and the Wisconsin State Building Trades Negotiating Committee for the 1981-83 biennium, covering employes in the building trades crafts collective bargaining unit, and authorizing an expenditure of funds.

Introduction:

Ayes, 6 -- Senators Risser, Kleczka and Chilsen,
Representatives Jackamonis, Loftus and Norquist;

Noes, 0 -- None.

Read first time and referred to committee on Senate Organization.

FRED A. RISSER
Co-Chair

EDWARD JACKAMONIS
Co-Chair

The committee on State and Local Affairs and Taxation reports and recommends:

SMITH, WILLIAM BRADFORD, of Madison, as a member of the Tax Appeals Commission, to succeed Keith Clifford whose term expired on March 1, 1981, to serve a six year term to expire on March 1, 1987.

Confirmation:

Ayes, 6 -- Senators Adelman, Berger, Hanaway, Lasee, Moody and Van Sistine;

Noes, 0 -- None.

TIMKEN, THOMAS R., of Wausau, as a member of the Tax Appeals Commission, to succeed himself, to serve a six year term to expire on March 1, 1987.

Confirmation:

JOURNAL OF THE SENATE [June 11, 1981]

Ayes, 6 -- Senators Adelman, Berger, Hanaway, Lasee, Moody and Van Sistine;

Noes, 0 -- None.

Senate Joint Resolution 18

Relating to allowing the legislature to provide property or other tax benefits for home improvements (first consideration).

Adoption:

Ayes, 6 -- Senators Adelman, Berger, Hanaway, Lasee, Moody and Van Sistine;

Noes, 0 -- None.

Senate Bill 188

Relating to collective bargaining units consisting of supervisors, making an appropriation and providing a penalty.

Adoption of senate amendment 1:

Ayes, 6 -- Senators Adelman, Berger, Hanaway, Lasee, Moody and Van Sistine;

Noes, 0 -- None.

Passage as amended:

Ayes, 4 -- Senators Adelman, Berger, Moody and Van Sistine;

Noes, 2 -- Senators Hanaway and Lasee.

Senate Bill 196

Relating to due dates for sales and use tax returns.

Passage:

Ayes, 4 -- Senators Berger, Lasee, Moody and Van Sistine;

Noes, 2 -- Senators Adelman and Hanaway.

Senate Bill 257

Relating to budgetary procedure in populous counties.

Passage:

Ayes, 6 -- Senators Adelman, Berger, Hanaway, Lasee, Moody and Van Sistine;

Noes, 0 -- None.

Senate Bill 277

Relating to the number of signatures required on nomination papers for party committeeman or committeewoman.

Passage:

Ayes, 6 -- Senators Adelman, Berger, Hanaway, Lasee, Moody and Van Sistine;

Noes, 0 -- None.

JIM MOODY

Chair

PETITIONS AND COMMUNICATIONS

State of Wisconsin
Department of Justice

June 4, 1981

To the Honorable the Legislature:

You have asked whether the Public Service Commission violates sec. 196.20(2), Stats., by granting utility rate increases under automatic fuel adjustment clauses without hearings.

It is my opinion that the granting of utility rate increases under automatic fuel adjustment clauses without hearings probably does not per se violate sec. 196.20(2), Stats. Whether there would be a violation would depend upon the type of adjustment clause being considered.

Section 196.20(2), Stats., provides: "No change in schedules which constitutes an increase in rates to consumers shall be made except by order of the commission, after an investigation and hearing."

The Wisconsin Supreme Court, in Wis. Environmental Decade v. Public Service Comm., 81 Wis. 2d 344, 260 N.W.2d 712 (1978), discussed the procedural requirements mandated in sec. 196.20(2), Stats., in reference to an "expanded adjustment clause." The expanded adjustment clause requested by Wisconsin Electric Power Company would have included, in addition to fuel, such expense items as purchased power, labor, supplies, steam, electric expenses, and supervision. The clause would have permitted the increases in the cost of these items to be passed on to consumers automatically and without further hearings. The court ruled that the expanded adjustment clause violated sec. 196.20(2), Stats., in that it circumvented the public hearing requirement imposed by that statute and stated that if expanded adjustment clauses are to be used as a regulatory tool, they will first have to be approved by the Legislature.

The court went out of its way to note that the validity of the traditional fuel adjustment clause was not at issue in the case before it, and emphasized that it expressed no opinion as to the permissibility of the fuel adjustment clause under the Wisconsin regulatory scheme. The court stated:

We find the expanded adjustment clause in this case to be invalid, because it circumvents the public hearing requirement mandated by the statute. We note, however, that the clause includes aspects typical of the more traditional fuel

adjustment clause. We re-emphasize the fact that the validity of fuel adjustment clauses is not at issue in this case. The clause involved here is invalid because of the additional elements which it contains.

81 Wis.2d at 352 n.4.

In my opinion, the court probably would not hold traditional adjustment clauses limited to fuel illegal. Adjustment clauses related to purchased power present a closer question.

The court noted that limited adjustment clauses have been used in Wisconsin for a long time:

Adjustment clauses have been used by utilities in Wisconsin at least since 1918. Milwaukee Electric Railway & Light Co., 21 W.R.C.R. 749 (1918). During the early days of utility regulation, adjustment clauses which included such items as labor costs were occasionally approved. Milwaukee Electric Railway & Light Co., 21 W.R.C.R. 749 (1918); Wisconsin Gas & Electric Co., 25 W.R.C.R. 191 (1920); Milwaukee Electric Railway & Light Co., 26 W.R.C.R. 288 (1922). With the exception of these early cases, however, adjustment clauses have traditionally been of a much more limited scope than the clause involved in this case. Typically, these clauses have provided for automatic adjustment of rates for changes in the price of purchased fuel, such as coal, oil, or natural gas, or adjustment for the price of power which the utility itself purchases from another utility and then resells. Limited adjustment clauses have also been the general rule in other states. Trigg, Escalator Clauses in Public Utility Rate Schedules, 106 U. Pa. L. Rev. 964, 987 (1958).

“Adjustment clauses of this more limited variety, which may be called ‘fuel adjustment clauses,’ have been widespread since World War I, and they are currently in use in more than forty states. 18 Ariz. L. Rev. 454-55 (1976).” 81 Wis. 2d at 347-48.

Thus, the Public Service Commission has, for a number of years, interpreted the statutory provision in question as allowing adjustments without hearing for purchased fuel or power. This interpretation has the apparent acquiescence of the Legislature, and is thus entitled to great weight in construing the statutory provision. Dunphy Boat Corp. v. Wisconsin E. R. Board, 267 Wis. 316, 64 N.W.2d 866 (1954).

The Public Service Commission, in deciding whether a particular automatic adjustment clause is legal may be guided by factors alluded to by the court in Wis. Environmental Decade: (1) public interest in participating in the rate-making process, and (2) the controllability of the items within the adjustment clause.

JOURNAL OF THE SENATE [June 11, 1981]

Such factors as advances in technology and industry practice may place historical practice in a new factual and legal context. Thus, to the extent that purchases of power may presently be considered within the control of the utility by appropriate planning and selection of generator technology, the historical exception from sec. 196.20(2) hearings for such adjustment clauses may be a proper subject for careful Public Service Commission reconsideration.

Finally, I would point out that these matters are not entirely free from doubt. If the Legislature believes that the Public Service Commission practice of allowing automatic adjustment clauses is no longer good public policy, the Legislature may wish to consider this issue.

Sincerely yours
BRONSON C. LA FOLLETTE
Attorney General

EXECUTIVE COMMUNICATIONS

State of Wisconsin
Office of the Governor
Madison, Wisconsin

June 10, 1981

To the Honorable, the Senate:

The following bills, originating in the senate, have been approved, signed and deposited in the office of the Secretary of State:

Senate Bill	Chapter No.	Date Approved
112 -----	15-----	June 10, 1981
129 -----	16-----	June 10, 1981

Sincerely,
LEE SHERMAN DREYFUS
Governor

MESSAGE FROM THE ASSEMBLY

By David R. Kedrowski, chief clerk.

Mr. President:

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

Assembly Bill 324

JOURNAL OF THE SENATE [June 11, 1981]

Concurred in:

Senate Bill 359

MESSAGE FROM THE ASSEMBLY CONSIDERED

Assembly Bill 324

Relating to the interest rate charged by counties and 1st class cities for overdue and delinquent real property taxes.

By Representatives Becker, Coggs, Crawford, Plous, Behnke, Kirby, Norquist, Tuczynski, Leopold and Broydrick, co-sponsored by Senators Braun, Moody and Berger.

Read first time and referred to committee on State and Local Affairs and Taxation.

By request of Senator Hanaway, with unanimous consent, he was made a co-author of **Senate Bills 327 and 445**.

CALENDAR OF JUNE 11

Senate Bill 121

Relating to various changes in the statutes pertaining to the department of regulation and licensing and its attached examining boards (suggested as remedial legislation by the department of regulation and licensing).

Read a second time.

By request of Senator Moody, with unanimous consent, **Senate Bill 121** was placed at the foot of the calendar.

Senate Bill 214

Relating to community service work by defendants and probationers.

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 214

Read a third time and passed.

Senate Bill 282

Relating to allowing ambulance drivers to handle sick, injured or disabled persons under supervision.

Read a second time.

Ordered to a third reading.

JOURNAL OF THE SENATE [June 11, 1981]

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

Senate Bill 282

Read a third time and passed.

Senator Frank in the chair.

9:18 A.M.

Senate Bill 327

Relating to the determination of death.

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 327

Read a third time.

The ayes and noes were demanded and the vote was: ayes, 27; noes, 6; absent or not voting, 0; as follows:

Ayes -- Senators Adelman, Bablitch, Berger, Engeleiter, Flynn, Frank, George, Goyke, Hanaway, Harnisch, Harsdorf, Johnston, Kleczka, Kreul, Krueger, Lasee, Lorge, Lorman, McCallum, Maurer, Moody, Offner, Risser, Roshell, Strohl, Theno and Thompson -- 27.

Noes -- Senators Bidwell, Braun, Chilsen, Cullen, Opitz and Van Sistine -- 6.

Absent or not voting -- None.

So the bill passed.

Assembly Bill 102

Relating to revising the membership of the state council on developmental disabilities.

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 102

Read a third time and concurred in.

Senate Bill 121

Relating to various changes in the statutes pertaining to the department of regulation and licensing and its attached examining boards (suggested as remedial legislation by the department of regulation and licensing).

Read a second time.

JOURNAL OF THE SENATE [June 11, 1981]

By request of Senator Bablitch, with unanimous consent, **Senate Bill 121** was referred to committee on State and Local Affairs and Taxation.

The president in the chair.

9:34 A.M.

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

MOTIONS

By request of Senator Moody, with unanimous consent, **Senate Bill 446** was withdrawn from committee on Human Services and referred to committee on Senate Organization.

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

INTRODUCTION OF BILLS

Read first time and referred:

Senate Bill 452

Relating to operating motor vehicles, using intoxicants or controlled substances, making appropriations and revising taxes and penalties.

By Senators McCallum, Harsdorf and Lasee; cosponsored by Representatives Nelsen, McEwen, Ladwig, Knox and Radtke.

To committee on Judiciary and Consumer Affairs.

By request of Senator Lasee, with unanimous consent, his name was removed as a co-author of **Senate Bill 222**.

AMENDMENTS OFFERED

Senate substitute amendment 1 to **Senate Bill 75** by Senator Harnisch.

Senate amendment 3 to **Senate Bill 222** by Senators Hanaway, Lorman, Johnston and Lasee.

Senate amendment 4 to **Senate Bill 222** by Senator Theno.

Senate substitute amendment 1 to **Senate Bill 310** by Senator Adelman.

JOURNAL OF THE SENATE [June 11, 1981]

Upon motion of Senator Bablitch the senate adjourned until
10:00 A.M. Tuesday, June 16.

9:38 A.M.

CHIEF CLERK'S REPORT

The chief clerk records:

Senate Bill 112

Senate Bill 129

Correctly enrolled and presented to the Governor on June 10,
1981.

CHIEF CLERK'S CORRECTION

Suggested by Legislative Reference Bureau

Senate Bill 156

1. Page 1, line 3: substitute "are" for "is".

Senate Bill 255

1. Page 4, line 5: substitute "(cg)" for "(cq)".