Rulings of the Chair

that included explanations

1971–2022

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Contents

Introduction

by Richard A. Champagne, director and general counsel

Parliamentary law is a set of practices and precedents that govern the internal actions and proceedings of the Wisconsin Legislature and other deliberative bodies. The written rulings of the chair in the Wisconsin Assembly and Wisconsin Senate are part of the legislature's contribution to a universal body of parliamentary law not tied to any one locality or time. Luther Cushing, the nineteenth century Massachusetts jurist, politician, and scholar, defining the scope of parliamentary law, explained that

> laws relating to the election and constitution of . . . legislative bodies; the rules by which they are governed and regulated; and the forms and methods in which their proceedings are conducted, constitute a particular branch of jurisprudence; which from having been first treated of with reference to the parliament of Great Britain, is denominated parliamentary law, or the law of parliament.[1]

A useful, contemporary summation of the aims of parliamentary law can be found in the newly revised *Robert's Rules of Order*:

> The application of parliamentary law is the best method yet devised to enable assemblies of any size, with due regard for every member's opinion to arrive at the general will on the maximum number of questions of varying complexity in a minimum amount of time and under all kinds of internal climate ranging from total harmony to hardened or impassioned division of opinion.[2]

Deliberative bodies, especially legislatures, employ parliamentary law to establish processes that allow business to be conducted in a timely and predictable manner. The core values of parliamentary law are economy, efficiency, and fairness. Parliamentary law generally derives from the Anglo-American legal tradition and is an evolving body of law with rules and precedents. There are many important sources of parliamentary law: the rules of each house of the legislature; the joint rules of the houses; statutes that prescribe or govern the internal operating procedures of the legislature; judicial decisions that affect legislative operations and procedures; the customs, practices, and usages of each house; and the authoritative rulings of the presiding officers of legislative bodies.

One of the most important sources of parliamentary law in the United States is *Jefferson's Manual of Parliamentary Practice*. Thomas Jefferson prepared the manual when he was vice president of the United States for use during his term as president of the United States Senate

1. Luther Stearns Cushing, *Elements of the Law and Practice of Legislative Assemblies in the United States of America* (Boston: Little, Brown and Company, 1866), 1.

2. *Robert's Rules of Order*, *Newly Revised*, 10th ed. (Cambridge, MA: Perseus Publishing, 2000), p. XLVIII.

from 1797 to 1801.[3] Jefferson, in discussing the importance of procedural rules, asserts that it is not essential for the rules to "be in all cases the most rational or not…It is much more material that there should be a rule to go by, than what that rule is." This seems to imply that rules can be anything, random or without coherence, just as long as there are rules. But this is not true, nor was it Jefferson's intention. Parliamentary law is a principled collection of practices and rulings that provides guidance on certain fundamental questions facing any legislature or deliberative body, such as: When is a legislative body lawfully convened to conduct business? Are members of a legislative body given the opportunity to attend? How is a quorum for legislative action determined? What is the question before the body? When is debate appropriate, and are members given an opportunity to express their views? Is there an opportunity for members to vote? How many votes are required for legislative action? Is there a record of the proceeding?[4]

Luther Cushing, in his parliamentary law treatise, captured all of these questions and more, discussing such topics as the qualification and election of legislative officers, the convening and adjournment of legislative sessions, the privileges of members, committee proceedings, offering of motions and other matters in debate, manner of voting, and a host of other topics core to the legislative function.[5] For hundreds of years, legislative bodies dealt with these procedural topics, establishing practices and preferred forms of action, as well as devising solutions to novel problems involving legislative procedures and actions. The practices and precedents adopted during these centuries of legislative innovation are what make up parliamentary law.

It is often asked, what is the aim or guiding principle of parliamentary law? At the most general level, the aim of parliamentary law is to provide an orderly, fair, and predictable process for the legislature or any deliberative body to conduct its business. At a more concrete level, however, the guiding principle of parliamentary law is that the majority of a deliberative body must be able to achieve its goals, but the minority of that body must have the opportunity to be heard. This said, the right of the majority to achieve its goals does not mean that the majority can do so whenever it chooses, while the right of the minority to be heard does not mean that the minority can indefinitely obstruct the will of the majority. Parliamentary law provides the steps the majority party must take to achieve its goals, and it specifies the limited opportunities the minority party has to be heard.

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3. *Jefferson's Manual of Parliamentary Practice*, available at https://www.govinfo.gov/content/pkg/HMAN-112/pdf/HMAN-112-jeffersonman.pdf. Assembly Rule 91 (2) attests to the continuing importance of *Jefferson's Manual of Parliamentary Practice* in governing assembly procedures.

4. See *Mason's Manual of Legislative Procedure*, 2020 ed., section 42.

5. *Elements of the Law and Practice of Legislative Assemblies in the United States of America*, pp. viii–xxxvi, contains an exhaustive table of contents.

The Wisconsin Legislature

The Wisconsin Constitution grants to each house of the legislature the power to "determine the rules of its own proceedings"[6]—a provision known as the rules of proceedings clause. The rules of proceedings clause is an explicit affirmation of the legislature's power to govern its operations and procedures without the involvement of the other government branches. The rules of proceedings clause is in some ways an invitation to the assembly and senate to employ and to participate in the making of parliamentary law. The ways in which the assembly and senate organize their chambers, elect officers, conduct business, engage in debate, and generally carry out their legislative functions build on and contribute to the development of parliamentary law. But it is in the reasoning contained in the rulings of the chair that parliamentary law is made richer and more effective at allowing for the proper functioning of the legislature.

The rulings of the chair in this publication cover from 1971 to 2022, a period that overlaps with high turnover in the legislature, changes in political party control of the assembly and senate, and rapid turnover in legislative leadership. But throughout this period, there was relative continuity in the regulation of legislative procedure. One of the more interesting demonstrations of continuity in legislative rules can be seen in 2009, when the Democratic Party became the majority party in the assembly. The Democrats had not been the assembly majority party since the 1993 legislative session. In 2009, at the outset of the legislative session, when changes to the assembly rules are usually proposed by the majority party, the Democratic majority did not propose any assembly rules changes, other than creating new assembly committees.[7] The existing rules, under which Republican majorities had regulated the internal operations and procedures of the assembly, were sufficient for the new majority party to achieve its policy goals. In this respect, the assembly rules were not considered partisan.

Even though there was relative continuity in the rules of legislative procedure during this period, it wasn't without political controversy or heated debate. All-night legislative floor sessions in the assembly were frequent, with legislative debate often beginning after 5:00 p.m.; biennial budget acts were sometimes late, at times by months; special and extraordinary sessions were regularly convened; and the marathon floor sessions during the enactment of 2011 Act 10 were the longest in Wisconsin history. And sometimes political disputes were expressed in terms of the unfair application of procedural rules to legislative debate. But, generally, the rulings of the chair by different presiding officers, representing different political parties, usually provided certainty in laying out a procedural path for how the majority political party could achieve its political goals, while at the same time allowing the minority

6. Wis. Const. art. IV, § 8.

7. 2009 Wis. AR 2.

political party to have the opportunity to be heard and express its will. The majority and minority parties did not always agree on the path, or the timing of steps along the path, but the established procedures provided overall order and allowed the legislature to meet and conduct its business.

The rulings of the chair and parliamentary law

The rulings of the chair in the Wisconsin Assembly and the Wisconsin Senate are the rulings of each chamber's presiding officer. In the assembly, the Speaker will generally gavel the assembly into session, preside over the opening orders of business, and then turn the chair over to the speaker pro tempore for the remainder of the session. More often than not, the rulings of the chair in the assembly are issued by the speaker pro tempore. In the senate, the presiding officer is the senate president who gavels the senate into session and presides over the entire floor session, vacating the chair only for temporary periods, such as when the president is engaged in floor debate on a proposal. In the president's absence, the presiding officer is most often the senate president pro tempore. The Speaker, speaker pro tempore, senate president, and senate president pro tempore are legislative officers elected by members at the outset of the legislative session.[8]

The presiding officers of the assembly and senate generally represent the will of their chambers and are charged with carrying out the demands of their chambers.[9] Presiding officers have many other duties, but their most important duty is to oversee the daily floor sessions of their respective houses. They announce the business before the house, receive and submit all motions, put to a vote all motions and questions, oversee debate, maintain the observance of order and decorum on the floor and in the larger chamber of each house, and rule on points of order and answer questions regarding parliamentary procedure.[10] It is this last duty—ruling on points of order and answering parliamentary inquiries—that is the focus of this volume, Rulings of the Chair.

Presiding officers typically answer a number of questions during the course of a floor day, most of which are uncontroversial and are usually restatements of ordinary rules that govern legislative procedure. But sometimes presiding officers issue rulings or provide answers to parliamentary inquiries that require a fair amount of reasoning and that address novel questions of parliamentary procedure in which there is no immediate or clear answer or precedent. When presiding officers grapple with a point of order or a parliamentary inquiry that requires such reasoning, applying procedural rules to novel situations or weighing the

8. Legislative officers are identified in resolutions that organize each house for session. See 2021 Assembly Resolution 1 and 2021 Senate Resolution 1.

9. Assembly Rule 3 (1) (k); Senate Rule 1m (1).

10. Assembly Rule 3m; Senate Rule 4.

importance of competing tenets of parliamentary law, they are contributing in their own small way to the development of parliamentary law, just as presiding officers in past legislatures have done through the centuries. Their rulings and answers strengthen and breathe life into parliamentary law as an authoritative body of law for our time.

The focus of this volume are those rulings of the chair that presiding officers committed to writing, with explanations, and that were entered on the Assembly Journal or the Senate Journal. Sometimes presiding officers entered these written rulings on the journals at their own initiative, while at other times senators or representatives to the assembly requested that the rulings be entered on the journals. By virtue of being entered on the journals, these rulings acquire precedential value and are on the record. Future presiding officers will rely on prior rulings in making their rulings. If future presiding officers disagree with the rulings, they will need to distinguish the fact situation that confronts them from the fact situation on which the prior ruling was based or they will need to depart explicitly from the prior ruling. It is rare for a presiding officer in the assembly or senate to overturn a prior ruling; the more usual course of action is to distinguish the fact situations that have resulted in a ruling on a point of order or a response to a parliamentary inquiry.

This volume contains a number of rulings of the chair that interpret assembly, senate, and joint rules; the Wisconsin Constitution; and statutes that govern legislative procedure. In reading these rulings, it is important to note how presiding officers approach a procedural problem. There may be a rule directly on point and seemingly clear, but that if applied to the fact situation at hand may undermine the policy behind the rule or upset long-established practices. For example, assembly and senate rules provide that an amendment to a bill must be germane to the bill and that an amendment to an amendment to a bill must be germane both to the amendment and the bill.[11] An issue arose during consideration of the 2011 biennial budget bill as to whether an amendment to an amendment to a substitute amendment to the budget bill was germane since it contained provisions not included both in the amendment and the substitute amendment to the bill. On the surface, the amendment appeared to violate the rule. Speaker Pro Tempore Kramer, however, ruled the point of order not well taken, holding that past legislatures "have used simple amendments as vehicles to introduce particularized details into the state's biennial budgets."[12] According to the presiding officer, therefore, applying the rule in this context, even though the rule was clear, would undermine a well-established practice of the legislature. The rule conflicted with the practice.

There could also be a statute that spells out a specific procedure that must be followed in the legislature, but that if followed in every instance would undermine the purpose of the

11. Assembly Rule 54 (5); Senate Rule 50 (4).

12. Wis. Assembly Journal, June 2011 Ex. Sess. (June 14, 2011) 394.

statute. For example, one statute provides generally that bills that appropriate moneys must contain an emergency statement from the governor or the Joint Committee on Finance if the bills will be taken up in the assembly or senate before enactment of the biennial budget act.[13] Courts consider a statute like this a rule of proceeding; though it is in statutory form and governs legislative action, it is not enforceable in the courts.[14] This statute had been originally enacted to bolster sound budgeting practices, so that the state could develop a comprehensive biennial budget and not a piecemeal budget spread across a number of individual bills.[15]

In 2007, the biennial budget bill prepared by the governor had stalled in the legislature, and the majority party in the assembly decided to draft its own budget bill—a legislative budget bill. Because this bill was to be considered before passage of the governor's budget bill, a question arose as to whether a legislative budget bill, in lieu of the governor's budget bill, required an emergency statement. Speaker Pro Tempore Gottlieb ruled the point of order not well taken, examining the legislative history of the statute and discussing the authority of the legislature to prepare its own budget bill. In his ruling, he provided a new test for the emergency statement requirement: if a bill appropriated "a significant percentage of state money for the coming biennium" and if the "authors of the bill have been clear in their intent that what they are introducing here, and bringing before the body, is a legislative budget bill," then the statute does not apply.[16] In this instance, the purpose of the statute—to discourage legislative consideration of piecemeal appropriations bills before passage of the budget bill—would be defeated if the legislature could not prepare and consider its own comprehensive budget bill.

Sometimes the presiding officers in the assembly and senate will differ in their rulings on the very same point. For example, in the assembly in 1998, in a ruling that has come to be known as the "Freese Rule," Speaker Pro Tempore Freese ruled that the assembly could not suspend a statute that governs internal legislative procedure. As he put it, "it is clear to me that we can ignore our own rules but we cannot suspend statutes."[17] The issue involved the withdrawal of a retirement bill from the Joint Survey Committee on Retirement Systems. Under the statutes, retirement bills could not be taken up on the floor without a report from the committee.[18] In contrast, in the senate in 2001, President Risser addressed the issue of whether the senate had to follow the statutory emergency statement procedure in considering an appropriations bill. He held that it did not. As he opined, "the Senate has the authority to determine its own rules of procedure, even if they conflict with an existing statute, as long

13. Wis. Stat. § 16.47 (2) (2021).

14. See State ex rel. La Follette v. Stitt, 114 Wis. 2d 358, 338 N.W. 2d 684 (1983).

15. See Ch. 228, Laws of 1949, and Jere M. Bauer, Jr., "Joint Committee on Finance," *Informational Paper* no. 78 (Madison, WI: Legislative Fiscal Bureau, Jan. 2021): 8–9, https://docs.legis.wisconsin.gov.

16. Wis. Assembly Journal (Sept. 25, 2007) 285.

17. Wis. Assembly Journal (Jan. 15, 1998) 494.

18. Wis. Stat. § 13.50 (6) (2021).

as they don't conflict with the Constitution or infringe on the rights of individual members."[19] Unlike in the assembly under the Freese Rule, when at the time statutes governing internal legislative procedure could not be suspended and must be followed, the statutes governing rules of procedure could be ignored in the senate.

These few examples indicate the types of issues that confront presiding officers and that must be decided if the legislature is to function effectively, fairly, and in a predictable manner. Presiding officers must harmonize conflicting rules, deal with the applicability of rules and statutes to given fact situations, and interpret the constitution on matters affecting the legislature. Their rulings on points of order and their answers to parliamentary inquiries become part of parliamentary law and are integrated with the rules, practices, and customs that govern legislative action and procedure.

There is one final point about the rulings of the chair that must be addressed, and this involves the issue of political party votes. More often than not, rulings of the chair are challenged on the floor and votes to uphold the rulings are along party lines. This usually occurs for two reasons. First, a ruling of the chair that is challenged on the floor often involves legislative consideration of a bill or amendment that divides the representatives or senators along partisan lines. There is usually little reason for members to challenge a ruling unless the consequences are significant or the ruling will set a precedent that members of one party believe will hurt their party in some way in the future. Second, there is an old saw that members may vote their conscience on bills but they must vote with their party on procedural issues. Although there is no mechanism to enforce party cohesion on procedural votes, it is often the case that challenges to rulings of the chair will be along party lines and the votes to uphold the ruling will be partisan votes.

That votes on procedural matters in the legislature occur along political party lines should not be surprising or detract from the fact that rulings of the chair that are upheld by the majority party nevertheless become part of parliamentary law—just as divided supreme court decisions along judicial philosophy lines become part of constitutional law. The legislature is a political institution, organized along political party lines, and the rulings of the chair are not removed from this organizational principle. Rulings of the chair do acquire precedential value and are rarely reversed by future presiding officers, regardless of political party.

A final note

This volume, Rulings of the Chair, is intended to be a working document that members and officers of the legislature, legislative staff, and the general public may use to understand the

19. Wis. Senate Journal (Feb. 13, 2001) 74. See also Senate Journal, March 2, 2006, page 674, for a similar ruling as applied to referral of bills to the Joint Survey Committee on Tax Exemptions under Wis. Stat. § 13.52 (6).

operation of the assembly and senate. The rulings in this volume are not academic. Instead, the rulings of the chair determine the fate of bills, identify the rights and responsibilities of members, and govern the internal procedures of the legislature. Knowing the rulings of the chair helps us understand how the legislature operates, but knowing the reasoning behind the rulings gives us an even fuller picture of the legislature in action. The reader of this volume will learn how presiding officers balance competing rules, establish practices and customs, and make possible majority rule while preserving the right of the minority to have its say. The rulings of the chair in this volume, from presiding officers of different political parties during the 1971–2022 period, are a vital part of Wisconsin's contribution to parliamentary law. That fact alone should command our attention. ■

Explanatory Note

What is a ruling of the chair?

"Ruling of the chair" is a term of legislative procedure. Each house of the Wisconsin Legislature conducts its business according to rules that it determines for itself. Under the rules of each house, a member may rise, during a meeting of the house, to assert that an action is occurring that violates the rules. This is called a "point of order." The chair must give a *ruling* on the point of order before that action can continue. If the chair rules the point of order "well taken," the action must be abandoned. If the chair rules the point of order "not well taken," the action can continue. A member may appeal the ruling of the chair, in which case the vote of the house determines whether the ruling stands.

Rulings of the chair are part of the process by which each house develops its rules. Both the Wisconsin Assembly and the Wisconsin Senate have put their rules in writing, in documents that they have adopted (and periodically amended) by formal vote. But the written rules are subject to interpretation. And beyond what the written rules state, the rules of a house are more properly understood as the practices, traditions, and customs that the house actually follows.

Which rulings are included here?

This collection presents a subset of the rulings that are recorded in the journals of the Wisconsin Assembly and the Wisconsin Senate for legislative sessions from 1971 to 2022.[1]

Only those rulings that are accompanied by an explanation are included here. Specifically, 1) every instance in which the chair provided an explanation is included, and 2) every instance in which the member raising the point of order proposed an explanation is included, regardless of whether the chair provided an explanation in response.

In addition, every response of the chair to a "parliamentary inquiry" is included. These responses are similar to rulings because parliamentary inquiries are similar to points of order: a member may rise, during a meeting of the house, to ask the chair for an explanation of the rules under which an action is occurring; and the chair must respond.

No information is included about whether a ruling was appealed. ■

1. It should be noted that there were no assembly rulings accompanied by an explanation during the 2017 and 2021 legislative sessions and no such senate rulings during the 2015 and 2017 legislative sessions.

Part I
Assembly

1971

Finance: referral of proposal to joint committee on
Assembly Journal, March 3, 1971, pp. 327, 328

Representative Froehlich rose to a point of order that Assembly Bill 210 must be referred to the joint committee on Finance because it would have a fiscal effect upon election finances.

Representative Anderson ruled the point of order not well taken because of the minimal and speculative nature of a possible fiscal note. [. . .]

[. . .] Representative Sensenbrenner rose to a point of order that Chapter 13.10 of the statutes requires that Assembly Bill 210 be referred to the joint committee on Finance.

Representative Anderson ruled the point of order not well taken on the same grounds as those held on the previous point of order.

Reconsideration motion
Assembly Journal, September 2, 1971, p. 2040

Representative Vanderperren moved reconsideration of the vote by which Assembly Bill 487 was indefinitely postponed. Entered.

Representative Stalbaum raised the point of order that the motion for reconsideration of Assembly Bill 487 was out of order because it had been previously put.

The chair ruled the point of order not well taken because the previous motion to reconsider had prevailed thus in effect expunging the record on that motion.

Tax exemptions: referral of proposal to joint survey committee on
Assembly Journal, September 10, 1971, p. 2108–2109

Representative Ferrall raised the point of order that Senate Bill 138 must be referred to the joint Survey committee on Tax Exemptions according to Section 13.52 (5) of the Wisconsin Statutes.

The speaker [Huber] ruled the point of order not well taken for the following reasons:

At first blush, this proposal reduces the income of the State of Wisconsin from income tax revenues and would, therefore, appear to be in the nature of a tax exemption. Bills granting a tax exemption must be referred to the joint Survey committee on Tax Exemptions before they are passed, so that the legislature can be apprised of their probable fiscal effect.

However, because of technicality in the structure of this proposal, and the wording of the powers and duties of the joint committee on Tax Exemptions under Section 13.52 (5) (intro.) of the statutes, it is my opinion that 1971 Senate Bill 138, in the present form, does not require such referral:

Section 13.52 (5) (intro.) reads in part: "It is the purpose of this committee to "analyze for the legislature any proposal "relating to the exemption of property or persons from any state or local taxes. . ."

Proposed Section 71.09 (11) (a) (intro.), contained in the present substitute amendment, states in part: "There may be deducted from the tax, *after the same has been computed according to the rates of this section*, an amount for parents of resident students enrolled in private schools. . ."

In other words, *nothing* will be *exempted* from the assessment of the Wisconsin state income tax which is not now exempted. The tax is assessed according to the provisions already found in the statutes. Only after the parent of a private school student has ascertained the amount of income tax payable which he owes to the State of Wisconsin does he then compute the amount of a credit, to be deducted from the tax due, to which he would be entitled under the present proposal.

Whether or not to grant such a credit to the parents of pupils in private school is a social welfare policy decision to be made by the legislature. It is, in my opinion, not a question of tax exemption.

Banking bills: 2/3 vote required (obsolete April 1981)
Assembly Journal, February 22, 1972, pp. 3743–3748

[Point of order] raised by Representative Sensenbrenner on Assembly Bill 1057.

The chair ruled that the point of order was not well taken. A detailed explanation of the ruling follows.

On February 17, 1972, the assembly passed Assembly Bill 1057 by a vote of 60 to 33.

The Gentleman from Marathon 2nd then moved that the rules be suspended and that Assembly Bill 1057 be immediately messaged to the senate.

At that point the Gentleman from Milwaukee 25th raised the point of order that Assembly Bill 1057 required a two-thirds vote on passage since it constituted "banking legislation" and thus was within the scope of Section 4, Article XI, of the Wisconsin Constitution.

Section 4, Article XI, provides:

"The legislature shall have power to enact a general banking law for the creation of banks, and for the regulation and supervision of the banking business, provided that the vote of two-thirds of all the members elected to each house, to be taken by yeas and nays, be in favor of the passage of such law."

Assembly Bill 1057 is a comprehensive bill which regulates the extension of credit to individuals in Wisconsin. The bill regulates interest rates and charges in credit sale and loan transactions; governs disclosures of information in credit transactions; limits the use of certain contract terms and practices in consumer transactions; regulates collection and repossession procedures; provides for administration and makes an appropriation. The bill treats the subject matter generally with its provisions governing consumer transactions involving all types of creditors including sellers and both licensed and unlicensed lenders.

There have been numerous cases decided by the Supreme Court of Wisconsin bearing on the construction of the language in the Constitution and also several opinions of the Attorney General relating to the application of this section of the Constitution to legislation.

The most concise summary of the law on the subject is found in the opinion of the Attornel [Attorney] General in 20 O.A.G. 1127 (1931) at Page 1128, as follows:

"The constitution formerly required the approval of banking legislation by the vote of the people, but in 1902 the clause was changed to its present form by amendment. The supreme court has construed these provisions in a number of cases. The gist of the decisions is that the constitutional requirement applies to substantive changes in the laws governing the creation of banks and the regulation and supervision of the banking business. General laws applying to banks as well as others which do not materially affect the creation of banks and the regulation and supervision of the banking business do not require a two-thirds vote. *Rock River Bank v. Sherwood*, 10 Wis. 230, 240; *Van Steenwyck v. Sackett*, 17 Wis. 645; *Brower v. Haight*, 18 Wis. 102; *In re Koetting*, 90 Wis. 166; *Northwestern Nat'l Bank v. Superior*, 103 Wis. 43; *State ex rel. Mandelker v. Mandelker*, 197 Wis. 518."

An exhaustive review of the Wisconsin Supreme Court decisions discloses no instance in which a statute having general application to banks *and* to others has been held to be banking legislation within the scope of the constitutional requirement of a two-thirds vote. In each case where the constitutional provision has been found to apply, the legislation in question dealt directly and exclusively with banks, their business, regulation or supervision. E.g. *State ex re. Reedsburg Bank v. Hastings*, 12 Wis. *47 (1860), involving a specific tax on banks; *Van Steenwyck v. Sackett*, 17 Wis. 645 (1862), involving a statutorily required

provision in bonds issued by banks; *Rusk v. Van Norstrand*, 21 Wis. 161 (1866), involving statutory provisions for stockholder bonds for bank stockholders; and *State ex. rel Bergh v. Sparling*, 129 Wis. 164 (1906), involving the statute creating the banking department. Consequently, the judicial case law in Wisconsin leaves no doubt that the requirement of a two-thirds affirmative vote contained in Section 4, Article XI, does not apply to general legislation like Assembly Bill 1057.

The most recent opinion of the Attorney General bearing on this question is found in 50 O.A.G. 139 (1961). At issue were two pending tax bills which would have directly affected banks by partially disallowing as deductions for state income tax purposes certain expenses incident to the purchase and carrying of tax-exempt federal obligations. Despite the substantial economic impact of these bills on banks, and even though they were undoubtedly specifically aimed at banks as the principal purchasers of government securities, the bills were held not to constitute banking legislation. In that opinion, the Attorney General stated:

"Nothing in these proposed provisions in any way says how, when or where a bank shall conduct its banking operations or that (sic) prohibits or restricts the exercise of any authority to carry on banking activities. They do not take away or cut down any right or privilege accorded to banks by any provisions of the banking laws. Such provisions are proposed as part of a general scheme of taxation as applied to banks as a particular class of taxpayers coming thereunder." 50 O.A.G. 145, 46.

Similarly, Assembly Bill 1057 constitutes "a general scheme" of consumer credit regulations which will apply to banks merely as one class of creditors coming thereunder. In no sense is it specifically designed for, or aimed at, banks in particular, as was the case with the tax bills under consideration in this opinion.

The only provision of Assembly Bill 1057 which deals specifically with banks is its repeal of Section 220.04 (6) (c) of the statutes which authorizes the Commissioner of Baking to permit banks to impose a service charge not to exceed $1 per 90 days on loans under $1000. Under the authority of this section, the Commissioner presently permits the maximum charge. Wis. Adm. Code *Bkg.* 3.01. Since the allowance and amount of this charge is wholly discretionary with the Commissioner and the charge can be disallowed at any time, the repeal of this section does not "take away or cut down any right or privilege accorded to banks by any provision of the banking laws." Moreover, the service charge repeal affects only the price for banking services, like the general usury law which the cases have held not to constitute banking legislation. *Brower v. Haight*, 18 Wis. 109 (*102) (1864). Such pricing provisions do not "prohibit or restrict the exercise of any authority to carry on banking functions."

In 1938, the Attorney General held that Wisconsin's Motor Vehicle Sales Finance Law, Section 218.01, does not constitute banking legislation. That law established a comprehensive scheme for the regulation of the sales and financing of motor vehicles

and imposed finance charge limitations, required prepayment rebates, notification requirements upon assignment of a contract, disclosures of credit cost to customers, sales practice prohibitions, and licensing for salesmen, dealers and financial institutions, including banks, to which purchase contracts were assigned. Administration of the law was assigned to the Commissioner of Banking. 27 O.A.G. 839 (1938).

The present bill, Assembly Bill 1057, creates a similar comprehensive scheme for the regulation of all consumer credit transactions, including those involving automobiles, under the jurisdiction of the Commissioner of Banking. It applies to banks in the same way that Section 218.01 does, not because they engage in the business of banking as constitutionally defined, but because they are simply one type of creditor engaged in extending automobile financing and other consumer credit.

Although Assembly Bill 1057 affects all consumer creditors, and brings many of them under the jurisdiction of the banking commissioner for the first time, the extension of consumer credit is not exclusively a banking function and therefore the bill does not constitute banking legislation. The powers of banks, and of the banking commissioner over banks, are not affected by the bill.

The precedents contained in rulings of the chair of both houses of the legislature support the conclusion that the vote required for passage of Assembly Bill 1057 is only a simple majority.

On January 15, 1970, the speaker ruled that Senate Bill 576 relating to directors and employees of national banks did not require a two-thirds vote on the grounds that the bill was not banking legislation, but an amendment to the criminal law. Assembly journal, Jan. 15, 1970, pp. 3409, 3417.

On December 20, 1961, the chair ruled in the senate that Assembly Bill 716 relating to imposition of a franchise tax on financial institutions and other matters did not require a two-thirds vote. Even though the bill made changes in the section of the statutes relating to deductions permitted banks, the chair ruled the bill affected income tax law which applies to corporations in general and was therefore not subject to the requirement of a two-thirds vote. Senate journal, Dec. 20, 1961, pp. 2515-16.

On July 6, 1961, the president of the senate ruled that Senate Bill 534 did not require a two-thirds vote for passage. The bill established maximum interest rates for loans under $5,000. The chair ruled that a two-thirds vote was not required because (1) the bill affected chapter 115 which related to money and interest, not chapters 220-224 which related specifically to banking; (2) the section applies to other persons as well as banks, and such provisions are not regulation of banking (citing many of the authorities relied upon in this decision); (3) Section 4, Article XI of the Constitution must be strictly construed in the interests of effective legislation. Senate journal, June 28, 1961 and July 6, 1961, pp. 1537, 1599-1600.

On December 10, 1959, the assembly speaker ruled that Assembly Bill 1000 and Assembly Bill 999 did not require two-thirds vote. The bills were omnibus taxing bills which included provisions for the taxation of banks. The chair ruled the bills were clearly "taxation" and not "regulation." Assembly journal, Dec. 10, 1959, pp. 2713-14, 2717-18.

On July 9, 1947, the president of the senate ruled that Assembly Bill 181 which provided for the transfer of certain licensing functions to the Banking Department did not require a two-thirds vote. The chair ruled that the transfer of licensing functions to the Banking Department did not bring the bill within the special constitutional provision relating to the passage of banking bills. Senate journal, July 9, 1947, pp. 1734-35.

Assembly Bill 1057 is a comprehensive, general measure applying to all types of creditors, including banks, in their dealings with consumers. It is well established that general legislation of this type does not constitute banking legislation within Section 4, Article XI of the Wisconsin Constitution.

Therefore, the point of order raised by the gentleman from Milwaukee 25th is not well taken.

NORMAN C. ANDERSON,
Speaker.

1973

Delayed calendar: sequence of completion
Special order: scheduling proposal as
Assembly Journal, February 15, 1973, pp. 440–442

On the point of order raised on February 14, 1973 during the discussion of Assembly Joint Resolution 1, the points raised by Representative Niebler and the speaker's ruling are spread upon the journal.

I respectfully submit this statement regarding the point of order I raised concerning Assembly Joint Resolution 1. The Speaker [Anderson] is considering the point of order under advisement.

Assembly Rule 61, in part, provides: "DEBATE UNDER DELAYED CALENDAR. (1) whenever the Assembly has one or more calendars pending of a later date than the calendar on which the assembly is then working, debate on measures on that calendar is limited, as follow. . ."

In the morning session February 14th, the gentleman from the 85th district moved to suspend the Assembly rules to make Assembly Joint Resolution 1 a special order of business at 4:00 p.m. on the same day. That motion passed by the required 2/3 vote. As

a consequence, the Assembly's consideration of Assembly Joint Resolution 1 is a special order of business under suspension of the rules. As such, by definition it cannot be subject to Rule 61m which applies only to bills on delayed calendars ("measures on that calendar").

In short, there is no way that Rule 61m can apply to a measure that is not on a delayed calendar, but rather is a special order of business under suspension of the rules.

Incidentally, I believe that this point of order is in exact conformity with the explanation of the new Rule 61m presented by the gentleman from the 85th on January 1st and 2nd.

Respectfully submitted,
JOHN H. NIEBLER,
Representative to the Assembly

On February 14, 1973 the Gentleman from the 97th raised a point of order that the time limitations on debate contained in Assembly Rule 61m did not apply to action on Assembly Joint Resolution 1, then under consideration, which had been made a special order of business on the calendar of February 14. At the time the point of order was raised the Assembly calendar of February 13th was then pending, and the Assembly had left consideration of the calendar of February 13th in order to consider the special order of business on February 14th.

The rule in question states that "whenever the Assembly has one or more calendars pending of a later date than the calendar on which the Assembly is then working, debate on measures on that calendar is limited as follows..." and then follows the specific time limits. Subsection 2 of Section 6 reads: "The limitations under Subsection I do not apply to measures made a special order of business by resolution offered by the Committee on Rules and adopted by the Assembly."

The intent of Assembly Rule 61m is clearly to impose time limits on debate when the Assembly has pending business on one or more calendars other than the printed calendar for the day that the Assembly is meeting.

The Gentleman from the 97th urges the interpretation that when a bill is made a special order of business for a given day, during consideration of that measure, the Assembly is working on the calendar of that day, and that the language of Subsection 1 of Assembly Rule 61m does not apply.

First, the Chair notes the language of Subsection 2 which specifically excludes from the time limitations of debate those measures that are made a special order of business by resolution offered by the Committee on Rules and adopted by the Assembly. The specific exclusion of application of time limits on debate to special orders of business created by resolution offered by the Committee on Rules and adopted by the Assembly by inference means that the time limits do apply to other kinds of special orders of business.

Furthermore, the Chair holds that the language in Subsection l referring to "the calendar on which the Assembly is then working" refers to the earliest calendar on which there is pending business. Since the earliest calendar on which there is pending business was Tuesday, February 13, the Chair therefore rules that the time limits on debate do apply to consideration of a measure on February 14 which had been made a special order of business for that day.

The point of order raised by the gentleman from the 97th is not well taken.

Referral motion (to committee)
Assembly Journal, February 15, 1973, p. 443

Representative Nager moved that Assembly Joint Resolution 1 be referred to the committee on Municipalities.

Representative Nager rose to the point of order that the twenty minute time limit having elapsed, a subsequent motion does not require a suspension of the rules.

The speaker [Anderson] ruled that the motion to refer to the committee on Municipalities takes precedence over the motion to reject, requires a simple majority vote, and is debatable for twenty minutes under Assembly Rule 61m.

Finance: referral of proposal to joint committee on
Referral motion (to committee)
Suspension of rules
Assembly Journal, March 20, 1973, pp. 625–626

On March 14, 1973, Representative Earl moved that Assembly Bill 128 be withdrawn from the calendar of March 15 and referred to the Joint Committee on Finance.

Representative Shabaz made the parliamentary inquiry as to whether the motion required a suspension of the rules and thus a two-thirds vote or whether it required a simple majority. The chair took the point of order under advisement.

It is obvious that if the motion had been made when Assembly Bill 128 was before the Assembly on the calendar of March 15, the motion would require a simple majority. This would be true whether the bill were required by statute to be referred to the Joint Committee on Finance prior to passage or not. Under Assembly Rule 18, bills appear on the printed calendar for action by being referred there by the presiding officer or by recommendation of a standing committee. The question before us, simply stated, is whether taking some action on a bill that is on a calendar ahead of the business that the Assembly is currently working on, constitutes taking a bill up out of order and therefore a violation of Assembly Rules 17 and 18 relating to the calendar and regular orders of business.

On March 2, 1971, Speaker Huber ruled that a motion to withdraw a bill from a future calendar and refer it to the Joint Committee on Finance required a suspension of the rules since it constituted an advancement of the bill ahead of its regular consideration under the rules. Advancement of the bill ahead of its regular consideration, as expressed by Speaker Huber at the time, apparently referred to taking the matter up prior to its normal time of consideration, and did not involve a determination that the particular measure had to go to the Joint Committee on Finance prior to passage and thus a motion to refer the bill to the Joint Committee on Finance constituted advancing the bill closer to passage.

There is one additional precedent from the Senate. On June 2, 1939, a motion was made to refer a bill from a future calendar to a committee. Upon a parliamentary inquiry as to whether that motion involved a suspension of the rules and required a two-thirds vote, Senator Rush, then presiding, held that the motion did involve a suspension of the rules and required a two-thirds vote.

On the basis of the foregoing precedents, the Chair feels compelled to rule that any motion to refer a bill on a future calendar to a committee involves a suspension of the rules and therefore requires a two-thirds vote.

Rules: adoption or amendment of
Assembly Journal, May 1, 1973, p. 1204

Representative Czerwinski moved that Assembly Bill 489 be withdrawn from the calendar of April 13 and referred to the joint committee on Finance.

Representative Shabaz rose to the point of order that the motion required a two-thirds vote since Assembly Resolution 22 had not taken effect because a motion for reconsideration of adoption of Assembly Resolution 22 was pending.

The speaker [Anderson] ruled the point of order not well taken because Assembly Resolution 22 took effect upon adoption and required no further action and a motion for reconsideration of its adoption did not repeal the resolution.

Emergency statement (to pass appropriation bill before budget)
Assembly Journal, June 27, 1973, pp. 1992–1994

Representative Baldus asked unanimous consent that the rules be suspended and that Assembly Bill 691 be given a third reading. Granted.

Representative Cyrak rose to the point of order that the bill could not be considered for passage at this time because it lacked an emergency statement.

The point of order was raised on June 27, 1973 by Representative Cyrak that Assembly Bill 691 requires an emergency statement under Sec. 16.47 (2) of the Statutes. Assembly Bill

691 provides up to $100 per call reimbursement from the highway fund to towns for rescue squad emergency calls on interstate highways, state trunk highways and county trunks.

Section 16.47 (2) of the Statutes provides (in part):

"No bill affecting the general fund and containing an appropriation or increasing the cost of state government or decreasing state revenues in an annual amount exceeding $10,000 shall be passed by either house until the general fund budget bill has passed both houses; except that the governor or the joint committee on finance may recommend such bills to the presiding officer of either house, in writing, for passage and the legislature may enact them, and except that the senate or assembly committee on organization may recommend to the presiding officer of its respective house any such bill not affecting state finances by more than $100,000 biennially."

The fundamental question raised by the point of order is whether the phrase, "No bill affecting the general fund ..." excludes from the coverage of the sub-section bills which only affect segregated funds such as the state highway fund.

The legislative history of section 16.47 (2) leads to the conclusion that it does. The phrase "no bill affecting the general fund" first became part of the section of the statutes in the 1953 session when the legislature repealed and re-created section 15.11 (2) of the statutes (the original version of 16.47 (2) before renumbering in 1959). Previously, the section had read:

"No bill containing appropriation or increasing the cost or expense of state government and no bill decreasing state revenues shall be passed by either house until the executive budget bill has passed both houses; except that the governor may recommend the enactment of an emergency executive budget bill which shall continue in effect only until the executive budget bill becomes effective or until the next succeeding July l, whichever is later."

The new section 15.11 (2) as the result of Chapter 49 of the 1953 Session read:

"No bill affecting the general fund and containing an appropriation or increasing the cost of state government or decreasing state revenues shall be passed by either house until the general fund budget bill has passed both houses; except that the governor may recommend and the legislature enact emergency general fund appropriation bills which shall continue in effect only until the general fund budget bill becomes effective or until the next succeeding July 1, whichever is later".

It was precisely this revised language that the state budget committee of the Legislative Council recommended for inclusion in the bill (Senate Bill 20) which eventually became Chapter 49 of the 1953 session. The minutes of the committee meeting of January 14, 1952, make it clear that the suggestion to add the phrase "affecting the general fund" was recommended by the committee for the express purpose of confining the restraints of the

emergency clause requirement to only bills affecting the general fund and not those solely affecting a segregated fund.

"There was extended discussion of subsections (2) and (3) of section 15.11. The committee agreed that there did not appear to be any necessity for having both subsections, since both referred to the same subject -- emergency appropriation bills. The committee were also of the opinion that the restraints provided by these two subsections were important only insofar as the general fund appropriations were concerned and that they probably should not apply to other budget bills such as those covering highways and conservation." (from Minutes of the State Budget Committee of the Legislative Council June 14, 1952, p. 5)

The motion by Senator Padrutt to recommend the change to the Council was passed unanimously by the Budget Committee.

Since the intent of the committee responsible for the drafting of what is now the language of Sec. 16.47 (2) was clear that the emergency clause provision should only apply to bills that affect the general fund and not the segregated funds and since there is no evidence in the legislative record to indicate that the full legislature intended a different meaning, it is the ruling of the chair that section 16.47 (2) only requires an emergency statement for bills that affect the general fund.

Since Assembly Bill 691 only affects the segregated highway fund, it is the ruling of the chair that the bill does not require an emergency clause.

Withdrawal motion: from committee
Assembly Journal, October 17, 1973, pp. 2760–2761

On October 16, 1973 the gentleman from the 85th moved that Assembly Bill 874 be withdrawn from the Joint Committee on Finance and made a Special Order of Business, which motion required a suspension of the rules and a two-thirds vote. The motion failed. Later, on the 10th order of business, the gentleman from the 78th made a motion to withdraw Assembly Bill 874 from the Joint Committee on Finance and refer it to the calendar. The gentleman from the 78th then raised a point of order in the nature of an inquiry addressed to the chair as to whether the motion would require a simple majority or a two-thirds vote.

Rule 26 (3) provides:

"If a motion to withdraw a proposal from a committee has been made and failed adoption, all subsequent motions to withdraw the proposal from that committee require a two-thirds affirmative vote and shall be decided without debate. Such subsequent motions are in order

only on the 1st day in each calendar week on which the call of the roll occurs under the 1st order of business."

This modification in Rule 26 was adopted early in the 1973 session and its purpose was to discourage repeated motions on successive days to withdraw bills from committee and to eliminate much of the debate which accompanied such motions while at the same time allowing at least one bona fide attempt to withdraw a bill from committee by majority vote after the bill has been in committee for 21 days. Although the language of the rule does not attempt to describe the particular motions that would be included in motions to "withdraw a proposal from a committee", the chair feels compelled to make a distinction. If a distinction is not made between a motion to withdraw a bill from committee that requires a suspension of the rules from a motion to withdraw a bill from committee that does not require a suspension of the rules, the opponents of a proposal could prevent the Assembly from ever having the opportunity to withdraw a bill from committee by a simple majority vote except by a withdrawal petition under Rule 26 (1) (b). Thus, a motion to withdraw a bill from committee and refer it to the calendar, assuming that the bill has been in committee for 21 days, will require a simple majority vote, provided that the motion is made in accordance with Subsection (4) of Rule 26 and further provided that it has not been previously made. Thereafter, in accordance with Subsection (3) any motion to withdraw the bill and place it on the calendar would require a two-thirds vote.

A motion to withdraw a bill from committee and take it up immediately, or to withdraw a bill and accomplish some other action which would require suspension of the rules will not exhaust the simple opportunity contemplated by Subsection (3) to withdraw a bill from committee and place it on the calendar by a simple majority vote at least one time.

Accordingly, the inquiry of the gentleman from the 78th as to whether his motion to withdraw Assembly Bill 874 from the Joint Committee on Finance and refer it to the calendar requires a simple majority or a two-thirds vote, is answered by saying that it requires only a simple majority. If this motion fails, all subsequent motions to withdraw the bill from the committee will require a two-thirds vote.

Fiscal estimate: not required

Assembly Journal, March 21, 1974, p. 4170

Representative Shabaz rose to the point of order that [Assembly Bill 1518] required a state fiscal note.

The speaker [Anderson] ruled that the report of the Joint Survey Committee on Retirement Systems contained a section on the cost of the bill and no additional fiscal note was needed to be in compliance with section 13.10 of the Wisconsin Statutes. The speaker ruled the point of order not well taken.

Retirement systems: referral of proposal to joint survey committee on
Assembly Journal, March 27, 1974, pp. 4365–4366

Representative Niebler rose to the point of order that Assembly Bill 1480 was not properly before the assembly under 13.50 (6) (a) Wisconsin Statutes.

The speaker [Anderson] ruled that the point of order was not well taken for the reason that Sec. 13.50(6)(a), which requires bills that create or modify retirement systems or which make pension payments to public officers or employees be referred to the Joint Survey Committee on Retirement Systems before being acted upon, does not apply to Assembly Bill 1480.

Assembly Bill 1480 does not provide for the payment of pensions or retirement benefits within the meaning of those terms expressed in Section 13.50. The intent and purpose for enactment of Section 13.50 was to provide the legislature with accurate information on proposals which would affect the actuarial soundness of the Wisconsin Retirement Fund and other retirement funds. A similar question to that raised now was presented during consideration by the Joint Survey Committee on Retirement Systems of Senate Bill 512, which provides substantially identical payments to retired teachers as is proposed in Assembly Bill 1480. In its printed report on Senate Bill 512, the Joint Survey Committee stated, "The fact remains, however, that the payments proposed by this bill are not retirement or pension payments, nor do they affect any public employe retirement fund or system. The Committee, therefore, makes no recommendation as none is required by law."

The payments proposed to be made by Assembly Bill 1480 do not affect in any way the actuarial soundness of the Wisconsin Retirement Fund or any other retirement fund. The payments are simply payments made to supplement retirement payments, paid directly from general purpose revenues and justified on the grounds of need. Such payments are a selective type of welfare benefit rather than pension payments, within the meaning of Sec 13.50. For these reasons, Assembly Bill 1480 need not be referred to the Joint Survey Committee on Retirement Systems, and the point of order is not well taken.

Payment of claims
Assembly Journal, March 29, 1974, p. 4517

Representative Niebler rose to the point of order that Assembly Bill 1576 was not properly before the assembly because the claim must first be considered by the State Claims Board under 16.007 Wisconsin Statutes.

The speaker [Anderson] ruled the point of order not well taken because the language of the bill on page 1, line 5 states "Notwithstanding section 16.007 (1) of the statutes," and if enacted would exempt the claim from consideration by the claims board.

Fiscal estimate: not required
Assembly Journal, March 29, 1974, p. 4518

Representative Niebler rose to the point of order that Assembly Bill 1576 was not properly before the assembly because the bill did not contain a fiscal note under 13.10 Wis. Statutes and Joint Rule 24.

The speaker [Anderson] ruled the point of order not well taken because the purpose of 13.10 was to provide cost information to members of the legislature and the bill as amended clearly provided for an appropriation of $20,000, thereby complying with the intent of the law.

Payment of claims
Assembly Journal, March 29, 1974, p. 4519

Representative Wilcox rose to the point of order that the bill was not properly before the assembly because a claim had not prepared in duplicate and filed in the office of the secretary of the Department of Administration as provided in 16.53(8) Wisconsin Statutes.

The speaker [Anderson] ruled the point of order not well taken because 16.53(8) referred to procedures for claims submitted to the state claims board and did not apply to Assembly Bill 1576.

1975

Fiscal estimate: not required
Assembly Journal, February 12, 1975, pp. 217–218

On February 11, 1975 the Gentleman from the 10th raised a point of order that Assembly Joint Resolution 17, then pending on the calendar, was not properly before us because it did not have a fiscal note as required under Sec. 13.10 (2) and Joint Rule 24. The Chair took the Point of Order under advisement.

Sec. 13.10 (2) of the Statutes refers only to bills and does not refer to resolutions. Sec. 13.20 (1) (c) of the Statutes requires that a fiscal note be provided for the staffing patterns resolutions passed by each house. If Sec. 13.10 (2) of the Statutes required fiscal notes on Joint Resolutions, Sec. 13.20 (1) (c) would not be necessary. However, it was enacted into law because 13.10 (2) did not require fiscal notes on resolutions.

In interpreting Joint Rule 24, the language of the rule does not refer to bills or resolutions, but rather speaks of "any measure." Joint Rule 24 was enacted to set forth the procedure for complying with Sec. 13.10 (2), and must be considered as an extension of that statute.

In a case directly in point, in the 1969 session, the presiding officer of the Senate ruled that Senate Joint Resolution 96 "directing the Legislative Council to study" a certain matter, did not require a fiscal note (Senate Journal, Oct. 3, 1969). Since it is desirable to have a uniform interpretation of the joint rules in both houses, the Chair feels bound to follow the Senate precedent in this matter, and accordingly rules that the point of order raised by the Gentleman from the 10th is not well taken.

Germaneness: issue already decided (substantial similarity)
Assembly Journal, May 21, 1975, pp. 929–930

Representative Shabaz rose to the point of order that assembly amendment 65 to assembly substitute amendment 1 to Assembly Bill 222 was not germane pursuant to Assembly Rule 55 (3) (c). He cited as a precedent, the ruling of the chair which appears on page 700 of the 1965 Assembly Journal in which assembly amendments 4 and 5 to 1965 Senate Bill 37 were ruled substantially similar.

The speaker [Anderson] made the following ruling on the point of order. "It happens I do recall the bill that was under discussion at that time and I have examined very carefully the documents which the Gentleman from the 83rd has offered. I am persuaded that the Speaker at that time, Speaker Huber, was correct in his interpretation of the rule and that the 2 amendments were substantially the same -- virtually identical. However, whether something is the same or different is a matter of judgment. Obviously, there is a difference of opinion between the Gentleman from the 83rd and the Gentleman from the 32nd and I suspect a majority of the people in this house. It may be that the difference is modest, but in the judgment of the chair, a significant difference. In any event, sufficient to take it outside the rule and accordingly the chair rules the point of order not well taken. I might further go on to say, Gentleman from the 83rd, again it is always useful to consider what the purpose of the rule is in interpreting the rule. The rule should not be used to achieve a different purpose than that for which it is originally enacted. The purpose of it is to prevent repeated unnecessary consideration of the same subject matter once a conscious determination has been made in this house. There is no member of this house that is unaware of the fact that the result of the vote last evening, at least in the case of 4 members of this house on both sides of the issue --3 on one and 1 on the other, turned out to be a mistake and therefore the result was different than that the members intended -- at least those 4. And had they voted the way they intended to vote and tried to vote, the result would have been different. I am persuaded that this amendment is significantly different on its own, even if that were not true, but I remind the Gentleman that the purpose for which the rule was adopted in the first place is not violated by the chair ruling even if I was wrong on the merits. For these reasons, the point of order raised by the Gentleman from the 83rd is not well taken."

Tax exemptions: referral of proposal to joint survey committee on
Assembly Journal, March 9, 1976, p. 3217

Representative Shabaz rose to the point of order that Assembly Bill 604 was not properly before the assembly because the language on page 12, line 11 of the substitute amendment required the bill to be referred to the Joint Survey Committee on Tax Exemptions pursuant to Wisconsin Statutes 13.52 (6). Representative Shabaz cited the definition of "proposal" in Assembly Rule 97 (61). Representative Opitz cited the ruling of the speaker on 1973 Assembly Bill 626 on February 19, 1974 (1973 Assembly Journal page 3542).

The speaker [Anderson] ruled as follows: "First of all, with respect to the precedent of last session, the chair recalls Assembly Bill 626 of last session as a totally different proposal than the proposal before us. The only two things that were the same was the fact that it dealt with wetlands, but the treatment and specifically the tax treatment was totally different between the two bills. Accordingly, the question that has now been raised is not decided by the precedent of what was ruled on Assembly Bill 626 because the character of the measures was totally different. We have to look at what the requirements of the Joint Survey Committee on Tax Exemptions statute provides and its intent. The intent of sec. 13.52 is to make sure that no new tax exemptions are created without some analysis being made of the impact of those proposals. The chair will assume for purposes of argument that there is no difference between an amendment and the original proposal. Substitute amendment 2 on page 12 in the section in question, talks about the deed of easement, where a deed of easement has been granted; thereafter the property to be assessed for its value as open space and so on. The provisions of section 8 that deal with taxation, the chair is reliably informed, simply restate what is the present law: namely, that where as is provided specifically in sec 70.32 which is cited in that amendment where there has been a deed of easement the property is valued omitting the value of that easement or deducting the value of that easement. A contribution of that kind, a dedication for public purposes, is presently deductible from the income tax under our existing law. In other words, the language contained in the section complained of by the gentleman from the 83rd is simply a restatement of what the law would be without the language there if this bill is adopted. Accordingly, since the intent of section 13.52 is to filter out what amounts to changes in our tax law and this does not change existing tax law, the point of order is not well taken."

1977

Conference committee: procedures relating to
Assembly Journal, February 16, 1977, p. 300

Representative Shabaz rose to the point of order that Representative Johnson could not be

appointed to the committee of conference on Senate Bill 63 pursuant to Sections 45 and 46 of Jefferson's Manual because he had voted "Aye" on receding from the assembly's position on assembly amendment 1. Representative Shabaz stated that although Representative Johnson had voted for concurrence in Senate Bill 63, he did not support assembly amendment 1, and therefore, could not represent the position of the majority of the assembly.

The speaker [Jackamonis] ruled that it is not necessary to have voted with the majority on consideration of amendments in order to be appointed to serve on the conference committee. Therefore, the point of order is not well taken.

Fiscal estimate: required

Assembly Journal, May 24, 1977, pp. 1068–1073

On April 13, 1977 the gentleman from the 56th Assembly District raised the point of order that 1977 Assembly Bill 108, relating to battery to persons aged 62 or older and providing a penalty, requires a fiscal estimate under Joint Rule 41 (1) and section 13.10 (2) of the Wisconsin Statutes. The chair took the point of order under advisement.

These two similarly worded regulations require that "any bill making an appropriation and any bill increasing or decreasing existing appropriations or state or general local government fiscal liability or revenues" be accompanied in the legislative process by a reliable estimate of the bill's anticipated fiscal effects. Whether or not bills that establish or alter penalties, but do not contain appropriation language, fall into this category of legislation, and thus are subject to the fiscal estimate requirement, is not readily apparent, but rather is a matter for reasoned inference and interpretation.

In making that interpretation, the chair is persuaded that it should be guided by the purpose, nature and significance of the fiscal estimate requirement; existing precedents; the general significance of the fiscal implications of penalty legislation; an assessment of our capabilities to obtain reliable fiscal information for such legislation; and a consideration of the potential impact of this ruling on the legislative process.

Purpose, Nature and Significance of Fiscal Estimates

In 1957, the Wisconsin Legislature became the first state legislature in the Nation to require the publication of fiscal estimates as appendices to certain pending bills. Although the text of this requirement has undergone modification since its original enactment as Joint Rule 24 of 1957, the basic thrust and intent have remained the same: to supply legislators with reliable and handy financial information on bills under consideration in order to facilitate informed decision-making. Fiscal estimates provide information about the availability, source and proposed utilization of financial resources associated with legislative proposals. They are the "price tags" and "financial terms" attached to "commodities" in the legislative

"marketplace". In the course of a legislative session, lawmakers are faced with making decisions on a great many separate proposals dealing with a wide variety of subjects, while at the same time they also experience a need to establish and pursue comprehensive goals and policies reaching beyond the purposes of specific pieces of legislation. Because financial considerations are an important "common denominator" of many legislative proposals, fiscal estimates can be a useful, important tool not only for evaluating specific proposals, but also for ordering priorities among them in the pursuit of broader public policies. Their importance takes on added dimensions when one considers the great reliance of legislatures on "the power of the purse" to exert influence in our tripartite framework of government.

Precedents

A Legislative Reference Bureau review of rulings from the chair for the past 20 years located two which are clearly relevant to the current point-of-order. The first of these was established on April 21, 1959, when Lieutenant Governor Philleo Nash ruled (1959 Senate Journal, page 575) that 1959 Senate Bill 284, a penalty bill making it a felony to issue checks with intent to defraud, did not require a fiscal estimate. This ruling appears to be based primarily on an assessment that the fiscal impacts stemming from this legislation could not be reliably estimated. The ruling states in part:

"...The only increase in the State's fiscal liability would arise in the event of a conviction under the criminal statutes and imprisonment at State expense." "In the opinion of the Chair, to require a fiscal note for such a remote, indefinite and uncertain obligation of the State, goes far beyond the meaning of Joint Resolution (sic) 24 and the intent of the legislature in enacting it."

This 1959 ruling appears to have served as the generally controlling precedent for legislative practice with respect to penalty bills for nearly two decades.

The other relevant precedent occurred on May 8, 1973 and limited the application of the Nash ruling by distinguishing between penalty bills in general and a sub-type of such bills. On that date, Lieutenant Governor Schreiber ruled (1973 Senate Journal, page 971) that penalty bills proposing a change in the treatment of offenders within the corrections system are subject to the fiscal estimate requirement. The specific proposal giving rise to the ruling, 1973 Senate Bill 227, made it mandatory for males aged 16 to 25 sentenced to prison for one year or more, to be placed first at the State Reformatory at Green Bay. Materials furnished to the Lieutenant Governor at the time by the state budget office indicated that the bill would have a direct, predictable effect on the costs of operating the State Reformatory and State Prison, as well as a possible indirect effect on the operational costs of the state's other correctional institutions. In arriving at his decision, the Lieutenant Governor appears to have relied heavily on the fact that at least some of this impact could be anticipated with a reasonable degree of confidence. While coming to different conclusions then, both

Lieutenant Governors appear to have based their decisions principally upon assessments of the predictability of the fiscal impacts involved.

Fiscal Implications of Penalty Legislation

The typical penalty bill we are concerned with here does not make or alter an appropriation; does not have as a purpose the raising of revenue; does not necessarily increase state or local fiscal liability; and, given the enforcement, prosecutional and sentencing discretion enjoyed by executive and judicial officials, has an impact which, at best, is difficult to anticipate.

Having said all this, it is nevertheless still true that most penalty bills do have potential fiscal impacts upon state and local treasuries and that such impacts can be substantial. This can be seen in the costs associated with implementing existing penalty legislation. The budget for the Division of Corrections in the current biennium is $116 million, and the Governor's proposed budget for this agency for the next biennium is $145 million, one of the greatest percentage increases for a state agency in the budget bill currently before the Legislature. According to the Division of Corrections, the cost of caring for each individual sentenced to a state prison is presently about $9,000 per year, and, since there currently is no unused bed capacity in the system, for every 25 to 30 individuals added to the prison system, capital expenditures of approximately $452,000 are required for facilities. Add to this the costs of enforcement and adjudication and it becomes clear that the cumulative impact of penalty legislation is indeed substantial and significant.

Current Capacity to Make Reliable Fiscal Estimates

Since 1957 when the fiscal estimate procedure was established, state agencies have significantly enhanced their ability to estimate fiscal impacts of all kinds. The acquisition of computer capabilities and numerous data banks are just two developments in state government which have greatly increased the sophistication of state agencies in providing information and in forecasting events and consequences. So, too, has the Legislature grown in sophistication in its approach to fiscal estimates. This year, with the adoption of the Legislature's joint rules, for the first time agencies have been instructed to specify in the narrative part of their estimates the assumptions utilized in computing costs and to provide a range of estimates when there is reasonable doubt about the impact of a proposed change in the law. These and other changes are resulting in the provision of meaningful and useful information to legislators, even when there is a great deal of uncertainty concerning the reliability of "bottom line" or net estimates, and even when no such net estimate is actually attempted. None of this is to say that predicting the fiscal impacts of many penalty bills will not continue to be frought with difficulty, due to the number and complexity of the variables generally involved. Rather, it is merely to say that we are now much better prepared to deal with the problems associated with such attempts and that important and relevant financial information can be provided even when reliable estimates are impossible.

The fact that a reliable estimate cannot be provided for a bill, furthermore, is in itself important information for legislative decision-making.

Decision

Taken together, the language of the fiscal estimate requirement, its purpose, the significance of fiscal information in the legislative process, the significance of present-day fiscal effects stemming from penalty legislation, and our improved capability to anticipate such effects and deal with fiscal estimate information in a way which contributes to rationality in legislative decision-making, all point to the conclusion that Lieutenant Governor Schreiber's ruling should now be expanded to cover additional groups of penalty bills. The only element of this analysis pointing to a different conclusion is the ruling of Lieutenant Governor Nash. In the opinion of the chair, however, that precedent should be read with an understanding that with the passage of time often come changes in the settings and circumstances relied upon to arrive at and justify applications of general requirements to specific situations. It is the opinion of the chair in this case that a different answer today to the same question raised and ruled upon many years ago is justified by the changes in state government which have occurred since 1959. The only question remaining, then, is the extent to which the Schreiber ruling should be expanded.

Given the generally acknowledged importance of fiscal information in the legislative process, it would seem far better to err on the side of asking agencies to prepare fiscal estimates for bills for which reliable estimates currently cannot be provided than it would to err on the side of not asking for such estimates when they actually could be provided. As already pointed out, even when agencies cannot make reliable net estimates, significant and meaningful information can be generated for the Legislature in the fiscal estimate process. Furthermore, it is reasonable to assume that asking agencies for estimates they are presently incapable of supplying will stimulate them to acquire such capabilities in the future. To maximize the availability of fiscal information in the legislative process, then, a policy of liberally construing the fiscal estimate requirement to apply to all penalty bills would seem most appropriate.

In addition, the chair is informed by the Legislative Reference Bureau that requiring fiscal estimates on all penalty bills would simplify their responsibility of identifying bills for which fiscal estimates are required, while a policy of distinguishing between different types of penalty bills would only complicate it. Based on the 1973 ruling of Lieutenant Governor Schreiber, the Bureau has generally sought fiscal estimates for penalty bills with a direct cost impact on the State's correctional system. The distinction between penalty bills having and not having such an impact, however, is tenuous at best, and, in practice, the chair is told, has led to frequent discussions in the Bureau as to whether a specific bill requires or does not require a fiscal estimate. This uncertainty is undesirable, for the legislative process is served best when a procedure is applied uniformly to groups of bills which can be easily identified by different individuals with few disagreements.

Accordingly, the chair now rules that the point of order raised by the Gentleman from the 56th Assembly District is well taken and that all penalty bills offered in the Assembly require fiscal estimates under Joint Rule 41 (1) and section 13.10 (2) of the Wisconsin Statutes.

Concurrence in amendment by other house: permitted procedures
Germaneness: negating effect of earlier amendment (not permitted)
Assembly Journal, February 28, 1978, pp. 3310–3311

On February 15, 1978 the Representative of the 13th Assembly District, Representative Kirby, raised the point of order that Assembly amendment 1 to 1977 Senate Bill 528, offered by the Representative from the 9th Assembly District, was not germane under Assembly Rule 50 (3) (e). The chair took the point of order under advisement.

During the debate preceding the point of order, the Representative from the 9th district requested that consideration of the bill be delayed until an engrossed text of the bill incorporating senate amendment 2 was printed. In the time since the point of order was raised, an engrossed text has been printed and distributed, and the amendment offered by the Representative from the 9th district has been rewritten by the Legislative Reference Bureau to apply to the engrossed text. Both of these documents should now be in the members' folders.

The difference between the text of assembly amendment 1 as originally offered and as it presently reads now that an engrossed text of the bill is available is helpful in understanding why the point of order was raised. When assembly amendment 1 was initially offered it read: "On page 5, line 15, insert the material deleted by senate amendment 2." In its present form the amendment refers to the printed engrossed bill and now reads: "On page 5, line 14, delete 'applies' and substitute 'and chs. 421 to 427 apply'."

In its original form then, it appears at first blush that Assembly Amendment 1 might be in violation of Assembly Rule 50 (3) (e) which provides that an amendment is not germane if it "negates the effect of another amendment previously adopted." In its revised form, however, although it would have precisely the same substantive effect, no such violation is suggested.

Regardless of the original form of this amendment, however, Assembly Rule 50 is a rule of this house and, insofar as it refers to actions on amendments, is intended to apply only to actions taken by this house. Accordingly, the prohibition contained in Rule 50 (3) (e) applies only to an amendment to a proposal before the Assembly which would negate the effect of an amendment to that proposal which was previously adopted by the Assembly. Since Assembly Amendment 1 to Senate Bill 528 does not negate the effect of any previously adopted Assembly Amendment to this bill, the point of order raised by the Representative from the 13th District is ruled not well taken.

Summary: Assembly Rule 50 (3) (e) prohibiting amendments which negate the effect of an amendment previously adopted applies only to amendments previously adopted by the Assembly.

ED JACKAMONIS
Speaker

Call of this house: business continues except on the specific question
Assembly Journal, March 7, 1978, p. 3392

Representative Shabaz rose to the point of order that the assembly should proceed to the next amendment to Assembly Bill 321 instead of proceeding to the next order of business while under call.

The speaker [Jackamonis] ruled the point of order well taken and cited as precedent a ruling made on May 10, 1973 (1973 Assembly Journal page 1320).

Call of this house: business continues except on the specific question
Assembly Journal, March 7, 1978, p. 3394

Representative Shabaz rose to the point of order that the assembly should proceed to the next amendment to Assembly Bill 321 instead of proceeding to the next order of business while the point of order on senate amendment 1 is under advisement.

The speaker ruled that the assembly would proceed to the next amendment in this particular instance without establishing a precedent.

Concurrence in amendment by other house: permitted procedures
Assembly Journal, March 8, 1978, p. 3451

Representative Hanson rose to the point of order that the motion for nonconcurrence in senate amendment 1 was not proper under Assembly Rule 65 because that motion had been made previously and had failed.

Representative Shabaz stated that the motion was also not proper under Assembly Rule 69 because there had been no significant intervening business.

The speaker [Jackamonis] ruled not well taken the point of order raised under Assembly Rule 65 because the language "shall not be allowed again on the same day and at the same stage in the consideration of that proposal" required both conditions to be met. Because the motion for nonconcurrence in senate amendment 1 had been made and lost on a previous day, the motion was ruled proper.

The speaker ruled that the motion was also proper under Assembly Rule 69 because action on other amendments, action on other bills and adjournment constituted "significant business" under Assembly Rule 69.

Retirement systems: report by joint survey committee on
Assembly Journal, March 9, 1978, pp. 3544–3545

Representative DeLong rose to the point of order that Assembly Bill 656 was not properly before the assembly because action taken by the Joint Survey Committee on Retirement Systems on Friday, March 3rd was not approved by a majority of the committee as required by Wisconsin Statutes 13.50 (5).

The speaker [Jackamonis] ruled the point of order not well taken because, although committee action requires a vote of the majority of the members, the action taken by the committee on Friday, March 3rd was not required and a written report by the committee was not necessary on the amendments. The speaker further ruled that it is proper for the chairman of the committee to submit committee reports to the chief clerk at his discretion and is not required to send a bill out of committee even though the committee has voted to make a recommendation to the full assembly. (The complete text of the speaker's ruling will be printed at a later date).

Concurrence in amendment by other house: permitted procedures
Germaneness: nature or purpose of proposal
Germaneness: negating effect of earlier amendment (not permitted)
Assembly Journal, March 28, 1978, pp. 4046–4048

On March 7, 1978 the Representative from the 93rd Assembly District, Representative Schneider, raised the point of order that, under Assembly Rule 50, Assembly Amendment 1 to Senate Amendment 1 to 1977 Assembly Bill 321 is not germane and, thus, is not properly before the Assembly. In support of this point of order Representative Schneider pointed out that: (1) under Assembly Rule 50 (3) (e) "an amendment which negates the effect of another amendment previously adopted" is not germane; and (2) under Assembly Rule 50 (3) (f) "an amendment which substantially expands the scope of the proposal" is also not germane. The Chair took the point of order under advisement.

Background

Assembly Bill 321 would prohibit the expenditure of state and local government funds on abortions except for: (1) those abortions which are medically determined to be needed either to save the lives of the women involved or to protect them from grave physiological injuries; and (2) those abortions performed to terminate pregnancies caused by rape or incest. Senate Amendment 1 eliminates the "*grave* physiological injury" exception to this

general funding prohibition. Assembly Amendment 1 to Senate Amendment 1, on the other hand, would amend the Senate Amendment to create a new exception for abortions performed to prevent "*severe* physiological injury." (Emphasis added.)

Assembly Rule 50 entitled "Germaneness of Amendments" is the principal rule governing the admissability of amendments in this house. Because the rule contains a good deal of broad, general and even somewhat conflicting language, the Chair is repeatedly called upon to interpret the rule's application to specific amendments. In determining the meaning of any rule, the Chair has attempted to favor the simplest construction consistent with the language of the rule and its apparent intent, the language and intent of other related rules, the general status and purposes of the body of rules of which the rule under question is a part, and the general powers and responsibilities which have been given to this house. The case in point is no exception.

Findings

As Assembly Rule 94 points out, the Wisconsin Constitution grants to each house of the Legislature the power to establish its own rules of procedure. It follows, then, that assembly rules can only, and are intended to only, govern the proceedings of this house. Applying this principle to Assembly Rule 50, it further follows that this rule is intended to govern only the admissability of *Assembly* amendments to proposals under consideration in the Assembly. This conclusion about the scope of the rule's applicability is also suggested by language found in the rule itself. Section (2) of the rule states that questions of germaneness raised under this rule "shall apply only to amendments originating in the Assembly . . . ."

Assembly Rule 50 (3) (e) provides that an amendment is not germane if it "negates the effect of another amendment previously adopted." Since Assembly Rule 50 as a whole is intended to govern only Assembly consideration of Assembly amendments, it seems reasonable to assume that where the rule refers to actions taken on amendments (such as "adoption") it likewise is intended to refer only to *Assembly* actions on such amendments. To construe this provision of the rule more broadly to prohibit the consideration of any Assembly amendment which would negate the effect of a previously adopted Senate amendment to the same proposal would be to interpret this rule in a way which could significantly restrict the ability of this house to disagree with Senate actions. The Chair can think of no plausible reason for so restricting the Assembly's authority and, for this reason, concludes that no such effect was ever intended. Instead of such a broad, far-reaching construction, the Chair believes the underlying intent of this portion of Assembly Rule 50 is much simpler and the same as that cited in previous rulings on Assembly Rule 50 (3) (c): to prevent the repeated consideration of amendments to a particular proposal which deal with the same issue, once the Assembly has made a conscious decision concerning the issue.

Accordingly, the Chair finds that Assembly Rule 50 (3) (e) is a prohibition only against the consideration of any Assembly amendment which would negate the effect of another

previously adopted *Assembly* amendment to the same proposal. Since the first argument raised by the Representative of the 93rd District is that the Assembly amendment would negate the effect of a Senate amendment, and since there is no Assembly amendment that would be negated, the Chair further finds that this argument in support of the point of order is not well taken.

The second argument made by the Representative from the 93rd District is that Assembly Amendment 1 to Senate Amendment 1 would significantly expand the scope of the proposal and, thus, is not germane under Assembly Rule 50 (3) (f). According to Assembly Rule 97 (61), the term "proposal" is a general term which refers to any proposition put before the Assembly for a determination. Since the only matter concerning Assembly Bill 321 which is presently before this house for a determination is Senate Amendment 1, in the opinion of the Chair, it is this amendment, not the bill itself, which must be viewed as the "proposal" contemplated by Assembly Rule 50. The question to be resolved, then, is whether or not Assembly Amendment 1 expands the scope of Senate Amendment 1. Because the Assembly and Senate Amendments clearly deal with the same subject matter, the Chair finds that the Assembly amendment does not expand the scope of the proposal before this house.

While not pointed out by the Representative from the 93rd, Rule 50 also prohibits the Assembly from considering any Assembly amendment "which is intended to accomplish a different purpose than that of the proposal to which it relates . . . ." The purpose of the proposal before us (Senate Amendment 1) is to delete certain language from Assembly Bill 321. The purpose of Assembly Amendment 1 to Senate Amendment 1 is to insert language in that proposal which is very similar to the language it would otherwise delete from the Assembly Bill. Consequently, in the opinion of the Chair, the intent of the Assembly amendment is to accomplish a purpose considerably different from the purpose of the proposal to which it relates. For this reason, albeit somewhat different than either of the arguments raised by the Representative of the 93rd District, the Chair rules well taken the point of order that Assembly Amendment 1 to Senate Amendment 1 to Assembly Bill 321 is not germane.

ED JACKAMONIS
Speaker

Abstract

Assembly Rule 50 (Germaneness of Amendments) applies only to *Assembly* amendments to proposals before the Assembly; A.R. 50 (3) (e) only prohibits an *Assembly* amendment which negates the effect of a previously adopted *Assembly* amendment to the same proposal; in the case of an Assembly Bill amended and returned by the Senate, "proposal" in Assembly Rule 50 means the Senate amendment or amendments.

Retirement systems: report by joint survey committee on
Assembly Journal, March 28, 1978, pp. 4049–4052

Clarification of March 9 Ruling on the First Point of Order Concerning AB 656

On March 9, 1978, the Representative of the 44th Assembly District, Representative DeLong raised the point of order that 1977 Assembly Bill 656, a public employe retirement bill, was not properly before the Assembly because the requirements of s. 13.50 (a) and (b) of the Wisconsin Statutes governing state retirement fund legislation had not been fully complied with. Specifically, he maintained that this bill could not be considered by the Assembly at this time because the statutorily required report on the bill and its pending amendments had not yet been submitted by the Joint Survey Committee on Retirement Systems to the Assembly Chief Clerk.

In answer to the point of order, the Representative of the 85th Assembly District, Representative McClain, Co-Chairperson of the Joint Survey Committee on Retirement Systems, maintained that the report on the bill required by law had indeed been submitted, that subsequently the bill had been rereferred to the Committee to give it an opportunity to consider amendments offered after the Committee's original consideration on the bill, and that while the Committee had not submitted a report as described in the law on these amendments, such a report on amendments was optional and not in fact required by the law.

Representative DeLong and others responded by maintaining that a second report on the bill and its amendments was required because the bill had been rereferred to the Committee.

The Chair ruled the point of order not well taken.

Background

Section 13.50 (6) (a) and (b) of the Wisconsin Statutes reads as follows:

(a) No bill or amendment thereto creating or modifying any system for, or making any provision for, the retirement of or payment of pensions to public officers or employes, shall be acted upon by the legislature until it has been referred to the joint survey committee on retirement systems and such committee has submitted a written report on the proposed bill. Such report shall pertain to the probable costs involved, the effect on the actuarial soundness of the retirement system and the desirability of such proposal as a matter of public policy.

(b) No bill or amendment thereto creating or modifying any system for the retirement of public employes shall be considered by either house until the written report required by par. (a) has been submitted to the chief clerk. Each such bill shall then be referred to a standing

committee of the house in which introduced. The report of the joint survey committee shall be printed as an appendix to the bill and attached thereto as are amendments.

Assembly Bill 656, an act relating to implementing merger of the Wisconsin retirement fund, the state teachers retirement system and the Milwaukee teachers retirement fund and granting rule-making authority, was referred to the Joint Survey Committee on Retirement Systems on April 14, 1977.

At the request of the Committee a substitute amendment to the proposal was drafted and introduced by the Assembly Co-Chairperson on August 21, 1977. The report required by s. 13.50 (6) (a) was written on the bill and this substitute amendment, was approved by a majority vote of all the Committee's members, and was subsequently transmitted to the Assembly on September 13, 1977.

Thereafter, the bill was referred, as required by law, to a standing committee in this House and then to the Joint Committee on Finance.

When the bill reached the floor of the Assembly on February 28, 1978, questions arose concerning the ability of the Assembly to act upon certain pending amendments which had been introduced after the Joint Survey Committee reported on the bill. The Chair advised those who asked that, in the Chair's opinion, the Assembly could not consider any such amendment to the bill if it would have a direct impact on a state retirement system because of the requirement in s. 13.50 (6) (a) of the statutes. The Chair further advised that since amendments "follow" the proposals to which they relate, and since there is no procedure for separately referring amendments to a committee, if the members wished to consider any amendments that had not been offered before the bill left the Retirement Committee, the bill would have to be rereferred to that Committee. That action was subsequently taken.

The Committee then met on March 3, 1978 to consider the amendments then pending to the bill. At that meeting, it was decided not to submit a report on the amendments under s. 13.50 (6) (a) but rather to merely report on the members' support for, and opposition to, the amendments in a manner similar to that utilized by standing committees in this House. This "report" was subsequently transmitted along with the bill to the Assembly and the Chair then rereferred the bill to the calendar.

Findings

While the language of s. 13.50 (6) (a) and (b) is not as clear as it perhaps ought to be, the Chair is convinced that the basic requirements of this statute can be clearly discerned by a careful reading of its language.

Clearly, the statute requires: (1) that any *bill* or *amendment* "creating or modifying any system for, or making any provision for, the retirement of or payments of pensions to public officers or employes" must be submitted to the Joint Survey Committee before it can

be acted upon by either House of the Legislature; (2) that no such *bill* can be acted upon by either house until the "committee has submitted a written report on the proposed bill"; and (3) that such written report on any such bill must "pertain to the probable costs involved, the effect on the actuarial soundness of the retirement system and the desirability of such proposal as a matter of public policy."

The fact that the statute is silent on the question of written reports on amendments is significant and can only lead to one conclusion: while both retirement bills and retirement amendments must be referred to the Joint Survey Committee before they can be acted upon by either House of the Legislature, the written report described in the law is only required on bills.

This same conclusion was reached in a Senate ruling on October 10, 1973 (1973 Senate Journal, page 1691) and a Senate ruling on November 9, 1977 (1977 Senate Journal, pages 1401-1403).

That such a report on AB-656 has not been properly written, approved and submitted to the Assembly has not been maintained by the Representative of the 44th District. Consequently, the Chair does not find persuasive the argument that the bill is not properly before the Assembly because the Committee did not submit a report as described in s. 13.50 (6) (a) on the bill's amendments. As far as amendments are concerned, in the opinion of the Chair, such reports are clearly optional.

As to the argument that the bill requires a second report as described in s. 13.50 (6) (a) because it was rereferred to committee, the Chair can only say it knows of no provision of law or the rules which imposes, or can be inferred to impose, any such requirement.

All of the legal requirements having been met, the Chair finds the point of order not well taken.

ED JACKAMONIS
Speaker

Abstract

Amendments affecting state retirement systems must be referred to the Joint Survey Committee prior to action by either House of the Legislature; because there is no procedure in the Assembly for referring such amendments to the Committee independently of the proposal to which they relate, in the case of amendments offered after a bill has left that Committee, rereferral is the only means of meeting this requirement; the Committee may, but need not, report on such amendments in the same manner as it *must* report on bills; in the case of rereferrals to the Committee, the Committee need not transmit a second report on the bill or any of its amendments.

Retirement systems: report by joint survey committee on

Assembly Journal, June 7, 1978, pp. 4385–4388

Clarification of March 9 Ruling on the Second Point of Order Concerning AB-656

On March 9, 1978 following the point of order and ruling by the Chair discussed on pages 4049-52 of this Journal, the Representative of the 44th Assembly District raised the further point of order that Assembly Bill 656 was not properly before the House because s. 13.50 (5) of the Wisconsin Statutes requires that all actions of the Joint Survey Committee on Retirement Systems be approved by a majority vote of *all* its members --i.e., at least six -- and the Committee's recommendations on certain of the amendments to Assembly Bill 656 were carried by a lesser number (5 to 3).

The Chair ruled the point of order not well taken.

Background

Section 13.50 (5) of the Wisconsin Statutes reads as follows:

> Committee Action. All actions of the committee shall require the approval of a majority of all the members.

Assembly Bill 656, an act relating to implementing merger of the Wisconsin Retirement Fund, the State Teachers Retirement System and the Milwaukee Teachers Retirement Fund and granting rule-making authority, was referred to the Joint Survey Committee on Retirement Systems on April 14, 1977.

At the request of the Committee, a substitute amendment to the proposal was drafted and introduced by the Assembly Co-Chairperson on August 31, 1977. The report required by s. 13.50 (6) (a) was written on the bill and this substitute amendment was approved by a majority vote of all the Committee's members, and was subsequently transmitted to the Assembly on September 13, 1977.

Thereafter, the bill was referred, as required by law, to a standing committee in this House and then to the Joint Committee on Finance.

When the bill reached the floor of the Assembly on February 28, 1978, questions arose concerning the ability of the Assembly to act upon certain pending amendments which had been introduced after the Joint Survey Committee reported on the bill. The Chair advised those who asked that, in the Chair's opinion, the Assembly could not consider any such amendment to the bill if it would have a direct impact on a state retirement system because of the requirement in s. 13.50 (6) (a) of the statutes. The Chair further advised that since amendments "follow" the proposals to which they relate, and since there is no procedure for separately referring amendments to a committee, if the members wished to consider any amendments that had not been offered before the bill left the Retirement Committee, the bill would have to be rereferred to that Committee. That action was subsequently taken.

The Committee then met on March 3, 1978 to consider the amendments then pending to the bill. At that meeting, it was decided not to submit a report on the amendments under s. 13.50 (6) (a) but rather to merely report on the members' support for, and opposition to, certain of the amendments in a manner similar to that utilized by standing committees in this House. This "report" was subsequently transmitted along with the bill (which by previous committee action had a written Retirement Systems Committee report appended to it) to the Assembly, and the Chair then rereferred the bill to the calendar.

Findings

The Chair has previously found that under s. 13.50 (6) (a) and (b):

> Amendments affecting state retirement systems must be referred to the Joint Survey Committee on Retirement Systems prior to action by either House of the Legislature; because there is no procedure in the Assembly for referring such amendments to the Committee independently of the proposal to which they relate, in the case of amendments offered after a bill has left that Committee, rereferral is the only means of meeting this requirement; the Committee may, but need not report on such amendments in the same manner as it must report on bills -- i.e., with a written report as discussed in the law; in the case of rereferrals to the Committee, the Committee need not transmit a second report on the bill or any of its amendments.

Since reporting on amendments in the manner prescribed by law is optional, it follows that any inability of the Committee to agree on a written report on any amendment by the majority vote prescribed in s. 13.50 (5), or any decision by the Committee not to issue such a report, cannot subsequently preclude Assembly action on any such amendment, or the bill itself, because legal requirements have not been met by the Committee. Optional actions are optional, not requirements.

Section 13.50 (5), furthermore, applies only to actions taken by the Committee. Under the Assembly's rules, and by long standing tradition, the action of transmitting a bill from an Assembly standing committee to the Assembly is a discretionary action taken by the Chairperson of that committee. Under standard Assembly procedure then, no committee ever votes to transmit a bill to this House. Rather, the committee's action on any bill referred to it is limited to voting to recommend that the Assembly take a special course of action on the bill and thereafter the Chairperson, at his or her discretion, transmits the bill together with a report on the committee's action to the Chief Clerk for action by the Assembly. The point is that once a committee has properly voted to recommend some action on a bill -- be it passage, indefinite postponement or not to make a recommendation -- the Chairperson may, but need not, transmit that bill to the Assembly. Given the fact that s. 13.50 does not prescribe another transmittal procedure for the Joint Survey Committee on Retirement Systems, the Chair can only conclude that the legislative intent of those who drafted this law was that the committee would be governed by Assembly and Senate transmittal practices. Accordingly, the Chair finds that the transmittal of an Assembly

bill from the Joint Survey Committee on Retirement Systems is an action taken by the Assembly Co-Chairperson of that committee rather than an action taken by the committee. Consequently, s. 13.50 (5) does not apply to such transmittals.

There is only one remaining question concerning this matter and that is: given s. 13.50 was the committee's report on its recommendations concerning the amendment properly stated. Since s. 13.50 (5) clearly states that *all actions* of the committee must be by the approval of a majority of all the members, and since the votes by which the committee recommended adoption of certain amendments did not carry by such a majority, the Chair is of the opinion that the report should have indicated that the committee could not agree on a recommendation regarding these amendments rather than that it had voted to recommend adoption of the amendments. This error was corrected on the floor by an announcement from the Chair and was, in the opinion of the Chair, not of sufficient magnitude to delay action on the bill.

ED JACKAMONIS
Speaker

Abstract

All actions taken by the Joint Survey Committee on Retirement Systems must be approved by a majority vote of *all* the Committee's members (6); this requirement does not prevent a bill or amendment from being considered on the Assembly floor if the action the committee could not agree on by a sufficient vote was optional to begin with; recommendations or written reports on amendments are such optional actions. The transmittal of a bill to the Assembly is a properly discretionary action of the Chairperson and not the Committee; consequently, no majority vote of all the members is needed to accomplish this action.

1979

Germaneness: appropriation to implement intent (addition permitted)
Germaneness: particularized detail
Germaneness: same purpose accomplished in different manner
Substitute amendment: questions of germaneness
Assembly Journal, February 27, 1979, p. 215

Representative Lallensack rose to the point of order that assembly substitute amendment 1 to Assembly Bill 46 was not germane under Assembly Rule 50 because the constitutional amendment providing for public debt for veterans' housing which was approved by the people in April 1975 (Wis. Constitution Article VIII, Sections 3 and 7) provided for general obligation bonding and not revenue bonding as contained in the substitute amendment.

The speaker [Jackamonis] ruled the point of order not well taken because amendments to bills are not required to be germane to the constitution. He also ruled: 1) the substitution of revenue bonding for general obligation bonding was a matter of particularized details and not one individual proposition amending another, 2) the substitute was intended to accomplish the same purpose in a different manner, and 3) the scope of the proposal was not expanded by changing the amount of the appropriation.

Fiscal estimate: not required

Assembly Journal, April 24, 1979, p. 431

Representative Shabaz rose to the point of order that Assembly Bill 492 required a local fiscal estimate under section 13.10 of the Wisconsin Statutes because local government expenses would be incurred in clearing the voting machines prior to the expiration of the 60 day waiting period.

The speaker [Jackamonis] ruled the point of order not well taken because Assembly Bill 492 was permissive legislation and would not by itself necessitate an expenditure by local governmental units.

Substitute amendment: questions of germaneness

Assembly Journal, May 8, 1979, pp. 562–563, 568

Representative Kedrowski rose to the point of order that assembly substitute amendment 2 to Assembly Bill 245 was not germane under Assembly Rule 54 (1) because the bill provides for a complete ban but the substitute would allow the sale, use and distribution of pesticides, and therefore, would require a title substantially different from the original proposal.

The speaker took the point of order under advisement. [. . .]

[. . .] The speaker [Jackamonis] ruled well taken the point of order raised by Representative Kedrowski that assembly substitute amendment 2 to Assembly Bill 245 was not germane because provisions of the substitute requiring permits for and regulating applications of pesticides would require a title substantially different from the original title.

Reconsideration motion

Assembly Journal, June 28, 1979, p. 1006

On June 5, 1979 (Assembly Journal, page 704) Representative Shabaz raised the point of order that the motion for reconsideration of assembly amendment 2 to assembly amendment 1 to assembly substitute amendment 1 to Assembly Bill 275 was not timely under Assembly Rule 73 (2).

The speaker [Jackamonis] ruled the point of order not well taken because Assembly Rule 73 (2) provides that motions to reconsider final actions on amendments may be entered (1) at any time after such action is taken, on the day the action is taken, while the proposal to which the amendment relates is before the assembly during the second reading stage of consideration; (2) immediately following completion of the second reading stage of the proposal to which it relates if that stage is completed on the same day; (3) during the eighth order of business on the same day the action was taken; and (4) during the eighth order of business on the first legislative day on which a roll call is taken following the day on which the action is taken.

Extraordinary session: conduct of

Assembly Journal, January 22, 1980, special session, p. 1848

Representative Wahner rose to the point of order that the hour of 10:00 A.M. had arrived and, therefore, the assembly was in extraordinary session.

Representative Shabaz stated that the assembly was in special session pursuant to Article IV, Section 11 of the Wisconsin Constitution.

The speaker [Jackamonis] ruled well taken the point of order raised by Representative Wahner that the assembly was in extraordinary session. He ruled that a regular session or an extraordinary session called by the legislature takes precedence over a special session called by the governor and cited two precedents as the basis for his ruling: 1) the June 19, 1962 ruling of senate president pro tempore Panzer and, 2) the December 10, 1963 ruling of assembly speaker Haase.

Adverse disposition: defeated proposal not to start again in same house

Assembly Journal, February 26, 1980, p. 2367

Representative Dorff rose to the point of order that Assembly Bill 937 was not properly before the Assembly under Assembly Rule 50 (2) because it was substantially similar to Assembly Bill 245 which had previously been before the assembly.

The chair [speaker pro tempore Kedrowski] ruled the point of order not well taken because Assembly Bill 245 had not been adversely disposed of.

Dilatory procedures

Assembly Journal, June 25, 1980, special session, p. 3640

Representative Loftus rose to the point of order that Representative Barczak was using "a procedure" which is dilatory under Assembly Rule 69.

The speaker [Jackamonis] ruled that Representative Barczak's procedure was dilatory because he had publicly stated that his intention was to delay a vote on the bill.

1981

Administrative rules: legislative review of
Assembly Journal, June 9, 1981, p. 629

Representative Loftus rose to the point of order that assembly amendment 1 to Senate Bill 359 was not germane under Assembly Rule 54 (3) (f).

The speaker [Jackamonis] ruled the amendment not germane under Assembly Rule 54 (3) (f) and the point of order well taken. The speaker stated that amendments which might otherwise be germane to the bill, are not germane in this case because of the limited scope of Senate Bill 359. The bill was introduced pursuant to section 227.018 (5) (e) of the Wisconsin Statutes to fulfill the statutory purpose of ratifying the action of the Joint Committee for Review of Administrative Rules.

Budget bills
Assembly Journal, October 30, 1981, p. 1703

The speaker [Jackamonis] ruled as follows on the point of order raised by Representative Loftus that Assembly Bill 818 was not properly before the assembly.

"Earlier today, the gentleman from the 46th rose to the point of order that Assembly Bill 818 was not properly before the Assembly because it was a budget review bill, within the meaning of s. 16.475, Wis. Stats. 1979, and that the authority to bring a budget review bill before the Assembly had been repealed by Chapter 27, Laws of 1981.

Under s. 16.475, Laws of 1979, if the governor determines that the fiscal condition of the state or implementation of budget priorities requires adjustments in state expenditures or revenues, he or she must submit recommendations for the adjustments to the legislature in bill form by the end of the 2nd week of the legislative session in the even-numbered year. The law also provided that such bills were exempt from certain procedural requirements, such as referral to relevant joint survey committees. Section 16.475 was repealed by Ch. 27, Laws of 1981.

It is apparent to the Chair that Assembly Bill 818 is a bill, which prior to the enactment of Ch. 27, Laws of 1981, would be considered to be a budget review bill. It makes adjustments to state expenditures and revenues in light of changes recently made to federal laws and other factors.

However, the provision in s. 16.475, prior to its repeal, did not limit the authority of the legislature to consider bills proposed by the governor which related to changing revenues and expenditures because of changing conditions. What the provision did primarily was to exempt such bills from certain procedural requirements.

The Chair notes that under s. 16.475, prior to its repeal, such bills were exempt from the requirement of s. 13.52, Wis. Stats. that bills creating tax exemptions must be referred to the Joint Survey Committee on Tax Exemptions. In the case of 1981 AB 818, the bill creates a tax exemption, and was referred to the Joint Survey Committee on Tax Exemptions for a report, a requirement to which it would have been exempt prior to the enactment of Chapter 27.

Section 16.475, created a special class of bills to deal with fiscal matters. It did not, however, in the opinion of the Chair, create an exclusive procedure for dealing with such bills. It was that exclusive procedure, and only that procedure, which was repealed by Chapter 27.

Accordingly, the Chair finds the point of order not well taken."

Fiscal estimate: not required
Assembly Journal, February 10, 1982, p. 2115

Representative Stitt rose to the point of order that Senate Bill 519 required a local fiscal estimate from the Department of Industry, Labor and Human Relations pursuant to Joint Rule 42 (1) (c).

The speaker [Jackamonis] ruled that section 13.10 (2) (a) of the Wisconsin Statutes did not require a local fiscal estimate from the Department of Industry, Labor and Human Relations because that Department did not administer the appropriation or collect the revenue.

Timeliness of point of order
Assembly Journal, March 4, 1982, p. 2505

Representative Thompson rose to the point of order that assembly substitute amendment 1 to Senate Bill 250 was not germane under Assembly Rule 54 (1) and (3) (f).

The chair [deputy speaker Tesmer] ruled the point of order not timely under Assembly Rule 62 (4) and Assembly Rule 66 because the assembly had not completed action on amendments to the substitute.

Concurrence in amendment by other house: permitted procedures
Assembly Journal, March 9, 1982, p. 2550

Representative Hopkins requested a division of the question on senate amendment 1 to Assembly Bill 62.

The speaker [Jackamonis] ruled that each senate amendment constituted a separate proposal before the assembly and, therefore, should not be divided under Assembly Rule 80 (4).

Germaneness: same purpose accomplished in different manner
Substitute amendment: questions of germaneness
Assembly Journal, March 25, 1982, pp. 2976–2978

[Ruling on the point of order of 3/16/82]

During the assembly debate on SB 70, Representative Loftus raised the point of order that Assembly Substitute Amendment 2 to that measure was not germane under Assembly Rule 54 (3) (f). That rule provides that an amendment is not germane if it substantially expands the scope of the proposal.

As passed by the senate, SB 70 establishes provisions governing periodic payment to contractors under public works contracts. That proposal would require public works contracts to specify the day of the month on which each monthly estimate is to be provided by the contractor and the name of the person to whom it is to be delivered. Payment to the contractor is due 30 days after the estimate is received and the final payment under the contract is to be made within 60 days after completion of the project. The proposal also specifies the percentage of each periodic payment which may be retained to assure prompt and adequate completion of the project.

Assembly Substitute Amendment 2 to SB 70 also relates to the periodic payment of contractors under public works contracts. However, instead of mandating the specific provisions which must be included in contracts governing these periodic payments, the substitute provides permissive authority for the state and other public bodies to include their own provisions which govern periodic payments. The scope of both proposals is the same. Both are limited in their extent and application to the subject of contracts providing for periodic payment; while the specific provisions of each are obviously different, the substitute does not address a broader area than does the senate version and consequently does not run afoul of Assembly Rule 54 (3) (f).

In addition, the substitute amendment is germane under the provision of Assembly Rule 54 (4) (b), as an amendment which accomplishes the same purpose as the original proposal in a different manner. The purpose of SB 70 is to specify provisions which must be included in public works contracts. As was pointed out by Rep. Plewa in discussion concerning the point of order, SB 70 establishes (1) a *maximum* percentage of each periodic payment which the public body *may* retain and (2) establishes a *maximum* length of time within which the public body must make payment. However, under the original proposal the state or municipality retains a considerable amount of flexibility and may elect not to retain anything out of each periodic payment or may retain less than 5% of each payment as the

work progresses. In addition, the contract may provide for partial payment as the work progresses. In addition, the contract may provide for partial payments within any time period shorter than 30 days and may provide for final payment within any time period less than 60 days. Thus, under the main proposal, the discretion of the state or municipality to specify such provisions in the public works contracts is maintained although limited.

Similarly, Assembly Substitute Amendment 2 to SB 70 authorizes municipalities to include provisions within their public works contracts which govern periodic payments. It details the type of provisions which may be included, while removing the limitations contained in SB 70. It therefore accomplishes the same purpose as the original, however in a different fashion.

While Representative Loftus also raised the point that Assembly Substitute Amendment 2 expanded the scope of the main proposal because it newly amended secs. 59.96 (6) (m) and 62.15 (10), I would note that the senate version also addresses these sections in making cross-reference changes under sec. 4 of that bill. The changes which Assembly Substitute Amendment 2 makes in those sections of the statutes are really unnecessary to accomplish the intent of the substitute and were only technical modifications made by the drafter similar to the cross-reference changes of SB 70. Provisions contained in a contract under Assembly Substitute Amendment 2 relating to periodic payments would continue to apply to contracts under 59.96 (6) (m) and 62.15 (10) in the same fashion as would the provisions established by SB 70. This is merely a particularized detail contained in the amendment which under Rule 54 (4) (e) would not cause the amendment to be nongermane.

In sum, I believe that Assembly Substitute Amendment 2 to SB 70 is germane under Assembly Rule 54 (4) (b) as an amendment which accomplishes the same purpose as the original proposal although in a different manner and the different provisions of the two proposals are nothing more than particularized details acceptable under Assembly Rule 54 (4) (e). As a result, the assembly should not be precluded by Assembly Rule 54 (1) from considering it.

Division of question

Assembly Journal, March 31, 1982, p. 3160

Representative Thompson rose to the point of order that assembly amendment 4 to Senate Bill 204 was not germane under Assembly Rule 54 (3) (f).

Representative Crawford asked unanimous consent for a division of assembly amendment 4 to Senate Bill 204. Granted.

The chair [Rep. Clarenbach] ruled lines 12 through 15 of assembly amendment 4 to Senate Bill 204 not germane.

Conference committee: procedures relating to
Assembly Journal, April 7, 1982, p. 3305

Representative Thompson asked unanimous consent that the rules be suspended and that Senate Bill 712 be made a special order of business at 4:00 P.M. today.

The speaker [Jackamonis] ruled the request out of order because Senate Bill 712 was in a conference committee.

1983

Germaneness: appropriation to implement intent (addition permitted)
Substitute amendment: questions of germaneness
Assembly Journal, May 24, 1983, p. 220

Representative D. Travis rose to the point of order that assembly substitute amendment 1 to Assembly Bill 450 was not germane under Assembly Rule 54 (1) and (3) (f) because it increases bonding authority and sets a specific site for the location of a prison.

Representative D. Travis also rose to the point of order that the bill was not properly before the assembly under section 13.49 (6) of the Wisconsin Statutes.

The speaker [Loftus] ruled that the bill was properly before the assembly because section 13.49 (6) of the Wisconsin Statutes did not require the referral of substitute amendments to the Joint Survey Committee on Debt Management.

The speaker also ruled that the substitute was germane under Assembly Rule 54 (4) (d).

Amendments: sequence of considering
Assembly Journal, February 23, 1984, p. 771

Representative T. Thompson rose to the point of order that assembly substitute amendment 2 to Assembly Bill 283, which was just introduced, should be considered prior to consideration of the remainder of the simple amendments to assembly substitute amendment 1 to Assembly Bill 283.

The speaker [Loftus] ruled that Assembly Rule 55 (1) required the assembly to complete action on assembly substitute amendment 1, and its simple amendments, prior to consideration of assembly substitute amendment 2 to Assembly Bill 283.

The speaker [Loftus] ruled the point of order not well taken.

1985

Reconsideration motion

Assembly Journal, April 25, 1985, pp. 118–119

Representative T. Thompson rose to the point of order that, under Assembly Rule 73, Senate Bill 76 should not be before the assembly, but should instead be on the calendar of Monday, April 29, because a motion to reconsider the vote by which Senate Bill 76 was ordered to a third reading was offered by Representative Paulson today.

The speaker took the point of order under advisement. [. . .]

[. . .] The speaker [Loftus] ruled the point of order raised by Representative T. Thompson not well taken because Senate Bill 76 was properly before the assembly under Assembly Rule 73 (2)(b). The speaker ruled that, pursuant to Assembly Rule 46 (5), Senate Bill 76, which was ordered to a third reading on Tuesday, April 23, was appropriately placed on the printed calendar of Thursday, April 25 under the eleventh order of business (third reading of senate bills). The speaker further ruled that a subsequent motion for reconsideration did not delay consideration of the bill beyond the time when it is "next regularly scheduled for consideration", but only served to put the question of reconsideration before the assembly.

Delayed calendar: sequence of completion

Assembly Journal, March 26, 1986, pp. 1026, 1037

Representative T. Thompson rose to the point of order that the assembly was not on the calendar of Wednesday, March 26 because a printed calendar had not been printed pursuant to Assembly Rule 29 (3).

The speaker took the point of order under advisement. [. . .]

[. . .] The speaker [Loftus] ruled that a printed calendar containing all of the proposals was not required for today's session because the committee on Rules had the authority to place bills on the calendar pursuant to Assembly Rule 24 (4). The speaker ruled not well taken the point of order raised by Representative T. Thompson.

1987

Timeliness of point of order

Assembly Journal, February 17, 1988, p. 676

Representative Radtke rose to the point of order that Assembly Bill 299 was required to be

referred to the Joint Committee on Finance under section 13.093 of the Wisconsin Statutes because of the adoption of senate amendment 3 by the senate.

The speaker [Loftus] ruled the point of order not timely because final action on senate amendment 3 had not been taken by the legislature.

Germaneness: issue already decided (substantial similarity)
Assembly Journal, March 17, 1988, p. 900

Representative Thompson rose to the point of order that assembly amendment 7 to assembly amendment 76 to assembly substitute amendment 1 to Assembly Bill 850 was not germane under Assembly Rule 54 (3) (c) because it was substantially similar to assembly amendment 6 to assembly amendment 76 to assembly substitute amendment 1 to Assembly Bill 850.

The chair (speaker pro tempore Clarenbach) ruled the point of order not well taken because the tabling of assembly amendment 6 to assembly amendment 76 to assembly substitute amendment 1 to Assembly Bill 850 did not constitute "already acting upon".

Adjourn or recess, motion to
Assembly Journal, March 25, 1988, p. 987

Representative Hauke moved that the assembly stand adjourned.

Representative Welch moved that the rules be suspended and that Senate Bill 300 be withdrawn from the committee on Rules and taken up at this time.

The chair (speaker pro tempore Clarenbach) ruled the motion out of order because a motion to adjourn was pending.

1989

Division of question
Assembly Journal, March 20, 1990, p. 921

Representative Welch asked for the following division of assembly amendment 22 to Senate Bill 300:

Part 1: Page 9, line 27 thru Page 10, line 7 and Page 16, lines 4 thru 6.

Part 2: Remainder of amendment.

The chair (Speaker pro tempore Clarenbach) ruled the request for division unacceptable.

Extraordinary session: conduct of
Assembly Journal, May 15, 1990, pp. 1060, 1064

Representative Kunicki rose to the point of order that assembly amendment 1 (relating to retroactive exemption of 1989 Assembly Joint Resolution 2 from adverse disposal) to Senate Joint Resolution 98 was not germane under Assembly Rule 54 (1), (3) (a) and (3) (f).

The chair took the point of order under advisement. [. . .]

[. . .] The chair (Speaker pro tempore Clarenbach) ruled on the point of order raised by Representative Kunicki on assembly amendment 1 to Senate Joint Resolution 98. The chair ruled that the amendment was not in order under Assembly Rule 93 (1) because adoption of the amendment would make the joint resolution not germane to the extraordinary session call.

1991

Budget out of balance
Veto review session: conduct of
Assembly Journal, October 16, 1991, p. 574

Representative Prosser rose to the point of order that to override item veto C-30 of Assembly Bill 91 would violate s. 20.003 (4) (required general fund balance) of the Wisconsin Statutes. He cited as precedents the point of order on 1985 Assembly Bill 447 raised on January 28, 1986.

The chair (Speaker pro tempore Clarenbach) ruled the point of order not well taken.

1995

Timeliness of point of order
Assembly Journal, February 16, 1995, p. 100

The chair (Speaker Pro Tempore Freese) ruled not timely the point of order raised by Representative Black that Assembly substitute amendment 2 to Assembly Bill 37 was not germane because there were simple amendments to the substitute amendment pending. The simple amendments to the substitute amendment must be disposed of before a point of order on that substitute amendment would be in order.

Suspension of rules

Withdrawal motion: from committee

Assembly Journal, February 28, 1995, p. 118

Representative Duff rose to the point of order that under Assembly Rule 15 (3), a motion to withdraw Assembly Bill 3 from committee required a two-thirds vote because a vote to withdraw the bill from committee had already been taken on January 17, 1995.

Speaker Prosser ruled the point of order not well taken, because the vote taken on January 17, 1995 to withdraw Assembly Bill 3 from committee was a vote on suspension of the rules, and not on a motion allowed under Assembly Rule 15 (2).

Germaneness: expanding scope of the proposal

Assembly Journal, March 9, 1995, p. 143

On Tuesday, March 7, 1995, Speaker Pro Tempore Freese ruled well taken the point of order raised on March 7, 1995 by Representative Goetsch that Assembly amendment 2 to Assembly Bill 159 was not germane under Assembly Rule 54(3)(f):

"The chair is prepared to rule on Assembly amendment 2. A point of order was raised by the gentleman from the 39th that Assembly amendment 2 expanded the scope of the bill under Assembly Rule 54 (3)(f), and looking through the amendment as well as the original bill, the gentleman from the 39th's remarks are accurate. Also, it expands the relating clause and so, therefore, I find that the point of order is well taken."

Debate: conduct during

Assembly Journal, April 7, 1995, p. 228

Speaker Pro Tempore Freese ruled not well taken the point of order raised by Representative Hubler that Assembly members may be referred to by name when reading from a document that is currently under debate, because under Assembly Rule 56(1), a member "shall confine his or her remarks to the question before the assembly and shall avoid personalities. A member may be recognized or addressed only by the number of the member's district."

Withdrawal motion: from committee

Assembly Journal, April 8, 1995, p. 233

Speaker Prosser ruled not well taken the point of order raised by Representative Freese on Friday, April 7 that the motion to withdraw Assembly Bill 73 from the Joint Committee on Finance was not in order under Section 16.47(2) of the Wisconsin Statutes and Assembly Rule 15(1)(b). The motion made by Representative Schneider to withdraw the bill from committee included a request for suspension of the rules and therefore was in order.

Germaneness: expanding scope of the proposal

Assembly Journal, September 27, 1995, special session, p. 507

Speaker Pro Tempore Freese ruled well taken the point of order raised by Representative Foti that Assembly amendment 23 to Assembly substitute amendment 1 to Assembly Bill 1, September 1995 Special Session was not germane because the amendment is an expansion of the scope of the bill. There is no mention in the bill of sky boxes or private luxury boxes by professional sports teams and because of that under Assembly Rules, it is clearly an expansion of the bill.

Special session: proposal or amendment not germane to the call

Assembly Journal, September 27, 1995, special session, p. 508

Speaker Pro Tempore Freese ruled not well taken the point of order raised by Representative Plache that Assembly substitute amendment 1 to Assembly Bill 1, September 1995 Special Session was not germane because the bill and the substitute amendment have virtually the same relating clause except eliminated the room tax and the highway infrastructure which, according to Assembly Rule 54(4)(c), is germane because it was limiting the scope of the proposal.

Assembly Bill 1, September 1995 Special Session created a local professional baseball park district in certain jurisdictions that is made up of multi counties contiguous to that county and that is two counties.

Assembly substitute amendment 1 also establishes a professional baseball park made up of multi counties that are contiguous and that is five counties.

Both the bill and the substitute amendment have components that deal with governance those differences that are within the components are different based on a particularized details of the jurisdictions. Both refer to jurisdiction in the plural.

Assembly Bill 1, September 1995 Special Session and Assembly substitute amendment 1 are both germane to the special session call. Where in fact, on the previous ruling dealing with the luxury box should have taken this point into consideration.

In the previous ruling of Assembly amendment 23 to Assembly substitute amendment 1, I neglected to include in that ruling that the amendment is not germane to the call under Assembly Rule 93(1) because no proposal may be considered by the Assembly unless they are germane to the session. We established that it was an expansion based on the fact we had a one tenth of one percent local taxing jurisdiction compared to the amendment that was offering to do a 5.5% in most taxing jurisdictions or most counties and was available to do in all 72 counties if there were indeed a professional type of facility that would use the luxury sky box or that type of system so it was an expansion because it not only raised it

from one-tenth of one percent at a local jurisdiction but it was establishing 5.5% statewide sales tax opportunity.

Assembly amendment 23 to Assembly substitute amendment 1 also is dramatically different from the standpoint that it is an expansion, Assembly substitute amendment 1 is dealing with particularized details in the fact that we're dealing with a multi county jurisdiction in both the substitute and the bill.

Orders of business (regular)
Assembly Journal, November 14, 1995, p. 655

Representative Travis rose to the point of order that Assembly Bill 69 was not properly before the Assembly under Assembly Rules 32(1)(a), 35(1), 42(1)(a) & (3), and 52(2)(b).

Speaker Pro Tempore Freese ruled the point of order not well taken. Under Assembly Rule 95(60) Senate amendment 3 to Assembly Bill 69 is not considered a proposal, making the point of order raised under Assembly Rule 32(1)(2) not well taken. The Senate adopted Senate amendment 3 to Assembly Bill 69 last week, making the point of order raised under Assembly Rule 35(1) not well taken. Senate amendment 3 to Assembly Bill 69 does not require a second reading reading [*sic*], making the point of order raised under Assembly Rule 42(1)(a) not well taken. Senate amendment 3 to Assembly Bill 69 is only considered a proposal for the purpose of amending, making the point of order raised under Assembly Rule 52(2)(b) not well taken.

Germaneness: expanding scope of the proposal
Assembly Journal, March 28, 1996, p. 1063

Representative Albers rose to the point of order that Assembly amendment 3 to Assembly Bill 924 was not germane under Assembly Rule 54 (3) (f).

Speaker pro tempore Freese ruled the point of order well taken because Assembly amendment 3 expands the scope of the bill under Assembly Rule 54 (1) and (3) (f) by eliminating all criteria.

Delayed calendar: sequence of completion
Interruptions or changes to regular order of business
Assembly Journal, March 28, 1996, p. 1067

Representative Black rose to the point of order that Assembly Bill 375 was not properly before the Assembly because under Assembly Rule 29(4), the Assembly must complete action on all proposals on a delayed calendar before continuing on today's calendar.

The chair (Representative Duff) ruled the point of order not well taken, because under Assembly Rule 32 (1), the regular order of business may be interrupted or changed at the discretion the presiding officer.

1997

Finance: referral of proposal to joint committee on
Assembly Journal, November 19, 1997, p. 427

Representative Krug rose to the point of order that Assembly Bill 463 was not properly before the Assembly because the bill is required to be referred to the joint committee on Finance before the Assembly can consider action on it under s. 13.093 of the Wisconsin Statutes.

The chair (Representative Duff) ruled the point of order not well taken because the rules and constitution do not specify that a proposal that requires action by the joint committee on Finance must go to that committee before action in either house. It just states that it must be referred to that committee before it is signed by the Governor. Therefore, if the bill does not get referred to the joint committee on Finance when it is in the Assembly, it still has ample time to get referred there after it is messaged to the Senate.

Retirement systems: report by joint survey committee on
Suspension of law (express or implied) under Stitt case
Assembly Journal, January 15, 1998, pp. 493–494

Speaker Pro Tempore Freese ruled well taken the point of order raised by Representative Foti on Tuesday, November 18, 1997, that the motion to withdraw Assembly Bill 421 from the joint survey committee on Retirement Systems was not in order.

On November 18, 1997, the Gentleman from the 72nd had moved to suspend rule 15 (1) (a) & (5), so Assembly Bill 421 could be withdrawn from the Joint Survey Committee on Retirement and taken up. The Gentleman from the 38th raised a point of order that this motion was not in order per Wisconsin Statutes Section 13.50 (6).

The Gentleman from the 72nd then rose on the point of order and cited from the previous rulings of the chair three cases where precedent had been established.

On October 28, 1983, Speaker Loftus ruled a motion out of order under section 13.50 (6) of the Wisconsin Statutes. (Note: Under s. 13.50 (6), stats., when a proposal must be referred to the Joint Survey Committee and has been so referred, "such proposal shall not be considered further by either house until the Joint Survey Committee has submitted a

report, in writing, setting forth an opinion on the legality of the proposal, the fiscal effect upon the state and its subdivisions and its desirability as a matter of public policy".) On October 6, 1981, Speaker Jackamonis ruled a similar motion out of order citing section 13.50 of the Wisconsin Statutes. On February 2, 1982, President Risser ruled on a point of order citing the same statutes.

Representative Schneider believed all three of these rulings came before the decision in State ex rel. Lafollette v. Stitt, 114 W (2d) 358, 338 NW (2d) 684 (1983). That case stands for the proposition that the court will invalidate legislation only for constitutional violations, not for violations of legislative rules in the statutes or elsewhere. Representative Schneider went on to propose that section 13.50 (6) is nothing more than a legislative rule like 15 (1) (a) & (5) or Joint rule 96 and they can all be suspended. Representative Schneider presented to the chair a memorandum from Peter Dykman, Acting Chief of the Legislative Reference Bureau in support of his contention that this particular statute was merely a rule and it could be suspended.

As presiding officer I took the point of order under advisement. Since then I have read the Stitt opinion, the previous rulings of the chair, as well as Masons manual, and assembly rule books dating as far back as 1943. I also looked at the relevant Wisconsin Statutes, when they were created and their correlation to the rules of the Legislature. Section 13.50 (6) was created in 1963 as Chapter 153, laws of 1963 as 13.44 (9) with exact wording as it appears today. In 1977, through Assembly Resolution 6, Assembly rule 26 was first created which is our current rule 15 (1). It appears to me that the legislative intent behind the statutes was to create a process that had to be followed and was not to be circumvented.

I then looked at the sequencing of the previous rulings along with the Supreme Court decision. The Jackamonis and Risser decision were handed down prior to the Supreme Court Decision and the Loftus decision came after the Supreme Court decision.

This ruling presents this institution with a dilemma. If these statutes are merely rules that we can easily disregard, then long standing traditions and requirements that this institution has followed will cease to exist. For example, we would no longer need to have appropriation bills referred to the Joint Committee on Finance, in fact we would no longer even be required to have a Joint Committee on Finance. Legislation submitting referenda to the voters would no longer need to contain the precise wording of the question which is submitted to the voters. The required General Fund Balance in the statutes could simply be ignored. Legislation that spends money could be passed at any time, even before the budget passes.

A question remains as to why previous legislatures first created statutes then 14 years later created the same as a rule. I believe they wanted a process that would not allow for certain procedures to be bypassed. The Stitt decision I believe merely supports the notion that it

is for the Legislature to decide and enforce its own rules. We clearly have the authority to suspend our own rules with a 2/3rds vote or by unanimous consent. It is this chairs ruling that we do not have the authority to suspend statutes when points of order are made. I believe the precedent that has been established by Speakers Jackamonis and Loftus and President Risser which occurred before and after the Stitt decision still stands.

As a cosponsor of the bill, it would be very desirable for me to simply disregard these previous rulings and help the bill become law. However, I believe strongly in the institution and its precedents, and therefore I must find the point of order well taken. It is clear to me that we can ignore our own rules but we cannot suspend statutes. This decision was based on these three previous rulings and the precedent that was established by placing both legislative statutes and rules as an order of process for legislation to pass.

Fiscal estimate: required
Assembly Journal, March 25, 1998, p. 754

Speaker Pro Tempore Freese ruled well taken the point of order raised by Representative Notestein on Tuesday, March 24 that Assembly Bill 942 was not properly before the Assembly pursuant to s. 13.093 of the Wisconsin Statutes and Joint Rule 41(1)(a) at that time. However, since a Fiscal Estimate had been received since that time, Assembly Bill 942 was now properly before the Assembly.

Extraordinary session: conduct of
Assembly Journal, April 21, 1998, extraordinary session, p. 803

Representative Jensen rose to the point of order that Assembly amendment 1 to Senate Joint Resolution 47 was not germane under Assembly Rule 93 (1) because it expands the scope of the extraordinary session call.

Speaker Pro Tempore Freese ruled the point of order well taken because the amendments to Senate Joint Resolution 47 which add proposals to the extraordinary session, would be out of order, while amendments to Senate Joint Resolution 47 which strike proposals from the extraordinary session, would be properly before the Assembly.

Extraordinary session: conduct of
Withdrawal motion: from committee
Assembly Journal, May 5, 1998, extraordinary session, p. 852

Representative Hubler rose to the point of order that the motion to withdraw Assembly Bill 441 from the committee on Judiciary and refer it to the committee on Rules required a two-thirds vote under Assembly Rule 15(1). Pursuant to Senate Joint Resolution 1, the bill

died at the conclusion of the last floorperiod on March 26, 1998. When the bill was revived, pursuant to Senate Joint Resolution 47, the 21-day period required by Assembly Rule 15(1) would have to begin again. Therefore, the bill had only been in committee for 14 days.

Speaker Pro Tempore Freese ruled the point of order not well taken because the Assembly concurred in Senate Joint Resolution 47 which states "...the following proposals are revived for further consideration in the April 1998 extraordinary session, which consideration shall begin at the stage that the proposals had reached immediately before adjournment on March 26, 1998". Therefore, he ruled that a two-thirds vote was not needed because the 21-day period required by Assembly Rule 15(1) began on July 1, 1997 when the bill was introduced and referred to the committee on Judiciary.

Retirement systems: report by joint survey committee on
Suspension of law (express or implied) under Stitt case
Assembly Journal, May 6, 1998, extraordinary session, p. 877

Speaker Pro Tempore Freese ruled well taken the point of order raised by Representative Klusman that Assembly amendment 25 to Assembly substitute amendment 1 to Assembly Bill 768 was not properly before the Assembly under s. 13.50(6) of the Wisconsin Statutes:

"I have reviewed Section 13.50(6)(b) which reads "No bill or amendment thereto creating or modifying any system for the retirement of public employes shall be considered by either house until the written report required by par. (a) has been submitted to the chief clerk. Each such bill shall then be referred to a standing committee in the house in which introduced. The report of the joint survey committee shall be printed as an appendix to the bill and attached thereto as are amendments."

In addition, I have reviewed the decision in State ex rel. Lafollette v. Stitt, 114 W (2d) 358, 338 NW (2d) 684 (1983), the previous rulings of the chair, Masons manual, and assembly rule books dating as far back as 1943. I also looked at the relevant Wisconsin Statutes, when they were created and their correlation to the rules of the Legislature. It appears to me, as it did in my previous ruling on Assembly bill 421 in January of this year, that the legislative intent behind the statues [statutes] was to create a process that had to be followed and was not to be circumvented.

This ruling presents this institution with the same dilemma as the ruling on Assembly Bill 421. If these statues [statutes] are merely rules that we can easily disregard, then long standing traditions and requirements that this institution has followed will no longer exist.

I believe, as I did earlier this year, that the previous legislatures first created statutes then 14 years later created the same as a rule because they wanted a process that would not allow for certain procedures to be bypassed. The Stitt decision merely supports the notion that it is for the Legislature to decide and enforce its own rules. We clearly have the authority

to suspend our own rules with a 2/3 vote or by unanimous consent. It continues to be this chair's ruling that we do not have the authority to suspend the statutes when points of order are made. I believe the precedent that has been established by Speakers Jackamonis and Loftus, the current Chair and President Risser which occurred before and after the Stitt decision still stands.

I find the point of order well taken. We can circumvent our own rules but we cannot ignore the statutes. This decision was based on previous rulings and the precedent that was established by placing both legislative statutes and rules as an order of process for legislation to pass."

Germaneness: limiting scope of proposal
Germaneness: particularized detail
Substitute amendment: questions of germaneness
Assembly Journal, May 19, 1998, special session, p. 910

Speaker Jensen ruled not well taken the point of order raised by Representative Krug that Assembly substitute amendment 1 to Senate Bill 2, April 1998 Special Session was not germane under Assembly Rule 54(3)(f).

The lady from the 12th and the gentleman from the 7th have asserted that the proposal is not germane on the grounds that the proposal substantially expands the scope of the proposal.

The proposed substitute amendment, Assembly Substitute Amendment 1 to Special Session Senate Bill 2, proposes to make various changes to the statutes governing the public school system in a 1st class city. One provision in the relating clause provides that this proposal relates to "reorganizing" schools in first class cities. It could be argued that this provision only *narrows the scope of this proposal and provides for a particularized detail (by providing for the creation of a commission and the placement of certain referendum questions concerning the reorganization of schools in first class cities in the spring, 1999 election)*. In addition, both the original bill and the proposed substitute have appropriations. This amendment is clearly germane under Assembly Rule 54(4).

1999

Multi-issue bills: problems of germaneness
Assembly Journal, June 29, 1999, p. 257

Representative Black rose to the point of order that Assembly amendment 25 to Assembly

Amendment 2 to Assembly substitute amendment 1 [to] Assembly Bill 133 was not germane under Assembly Rule 54 (3)(c) and (5).

The Chair (Representative Duff) ruled the point of order not well taken. The chair ruled as follows:

"Assembly amendment 25, which prohibited constitutional officers, except the governor, from having their likeness on an outdoor sign, sought to replace language in Assembly amendment 2 prohibiting constitutional officers, except the governor, from using state funds to place their likeness on a billboard.

Assembly amendment 25 is not a substantial expansion of Assembly amendment 2 because it amended and modified the same section, subject and related to the particularized details included in Assembly amendment 2. The amendment also did not substantially expand the scope of the original proposal, a multi-subject executive budget bill, because it merely adds to the directives and requirements to state agencies and constitutional officers that are typically included in budget bills."

Division of question

Assembly Journal, October 6, 1999, pp. 383–384

The Chair ruled not well taken the point of order raised by Representative Hubler that the committee of conference report on Assembly Bill 133 is divisible.

The complete text of the Chair follows:

"The Lady from the 75th had raised a Point Of Order that didn't basically agree with the Chair declaring her motion to divide the Conference Committee Report. She raised a Point Of Order that the Conference Committee Report could be divided, as I understood it, into Sections 1, 2, and 3. I believe her original motion was to divide it into Item 3.

The Chair has spent some time trying to work through this particular Point Of Order to make sure because I am sure that the Lady will ask that it become precedent in the rulings of the Chair. So the Chair has taken some time looking at Assembly Rules, Joint Rules, Senate Rules, Mason's Manual and Jefferson's Manual to try to resolve this issue. The Lady from the 75th and the Gentleman from the 44th make the Point Of Order that we can divide it into different components based on Assembly Rule 80(4).

Assembly Rule 80(4) lists what is not divisible and because the Report On Committees doesn't happen to show up there it is the belief, I believe, of the Lady from the 75th and the Gentleman from the 44th that because it is merely not stated there, that it is divisible. One has to, I believe, look at Assembly Rule 80(1), which is "any member may request a division of simple amendments and motions involving distinct and independent propositions or concurrent action if they are severable without being rewritten or restated and the question

shall be divided if each separate proposition or action to be voted on is complete and proper, regardless of the action taken on the other portions of the original question."

So the Chair looked, taking the advice that the Lady from the 75th and the Gentleman from the 44th were telling the Chair that this is a Report on the Committee On Conference. It is not an amendment, they report, because it is not specifically talked about in Assembly Rule 80(4). Therefore, it is divisible. It is the Chair's opinion, that under Assembly Rule 80(1), which governs what is divisible, this simply is not an amendment. It is not a simple amendment. Actually, if we were even to take conference amendment l, which is an amendment to the Assembly Substitute Amendment, I think members can easily see that this is just not a simple amendment. It is rather complex. It's actually a little longer than Gone With the Wind, and has quite a bit more intrigue in it, I think.

So, it is clearly, to the Chair, not a division of a simple amendment because as the Lady from the 75th and Gentleman from the 44th pointed out in their Points Of Order, that it was a report that should be divided based on the fact that it didn't show up in 80(4).

Then the Chair went one step further just to have a little more comfort because if it were an amendment, could this amendment be divided and taken up in three different components? It is the Chair's belief that under Assembly Rule 80(1), that each question if they were divided, Question l., Question 2 and Question 3 and were separate propositions or actions to be voted on, would be complete and proper regardless of the action taken on the others. And it is this Chair's opinion that they would not be, as the Chair was asking during the point of order that was being raised if Section l were adopted and Section 2 and Section 3 were not, could the bill stand on its own? The Chair's belief is, no it could not. If Section 2 were adopted but not Sections 1 and 3 the same situation. Or, if only Section 3 were adopted without negating the actions taken by the Senate and Assembly, could it stand on its own? It is the Chair's belief that it could not.

But wanting to make sure because knowing the Lady from the 75th was going to be fairly persistent and the Gentleman from the 44th is a scholar of the rules, I wanted to make sure that I wasn't not reading this properly and when one looks at the Joint Rules, Joint Rule 3(3) "approval of the Conference Report by roll call vote in each house sufficient to constitute final passage of the proposal shall be final passage of the bill or Joint Resolution in the form and with the changes proposed by the report." And the Joint Rules really are silent on whether or not we can amend the Conference Report.

So the Chair looked at Senate Rules which are somewhat more obscure than ours and really not to the point, so the Chair looked at what other rules are available to us to determine and under Assembly Rule 91(1) "in the absence of pertinent Assembly or Joint Rules questions of parliamentary procedure shall be decided according to applicable rules of parliamentary practice and Jefferson's Manual which are not inconsistent with constitutional or statutory provisions relating to the functioning of the legislature."

So, upon reading about the statutory provisions, we did a search of the Wisconsin Statutes and Constitution to see if there is something that would apply there. Of course, that didn't help us. So the Chair then referred to Jefferson's Manual. And, if members want to take a look on page 47 in the section on Conferences on page 48 as well and the ending of this regarding conference committees "and each party reports in writing to its respective house the substance of what is said on both sides and entered into the Journal."

And that is the report we have before us. "This report can not be amended or altered as that of the committee may be." So, the backup for Assembly Rules and Joint Rules was Jefferson's Manual but also wanting to make sure that that is the established precedent, I looked to Mason's Manual which is the manual we often refer to as well and under Section 770 (2) it says "in voting in a conference committee, the committee of each house votes separately. The committee on conference from each house submits its report to the house from which it was appointed, "which we have. "The report upon being received may be treated like other reports except that the report of the conference committee is usually given higher precedence."

That's why we're here at 10:00 p.m. "Under no condition, including suspension of the rules may the house alter or amend the Report of the Committee, but must adopt or refuse to adopt the report in the form submitted."

So it is the opinion of the Chair that the Lady from the 75th's Point Of Order is not well taken based on those following reasons."

Orders of business (regular)
Assembly Journal, November 10, 1999, p. 547

Speaker Pro Tempore Freese ruled not well taken the point of order raised by Representative Krug on Tuesday, November 9, that Assembly Bill 580 was not properly before the Assembly under Assembly Rule 35 (1). Speaker Pro Tempore Freese ruled the point of order not well taken because twenty-four hours had elapsed.

Germaneness: same purpose accomplished in different manner
Substitute amendment: questions of germaneness
Tax exemptions: referral of proposal to joint survey committee on
Assembly Journal, April 11, 2000, pp. 921–922

On Wednesday, March 29 (page 879 of the Assembly Journal), Representative Black rose to the point of order that Assembly substitute amendment 2 to Assembly Bill 941 was not properly before the Assembly.

Speaker Pro Tempore Freese ruled the point of order not well taken.

The full text of Speaker Pro Tempore Freese's ruling follows:

"The rules clearly indicate that by adding an appropriation it does not expand the scope of the bill. This is a germane amendment. That's very clear from this Chair's perspective, under the rules.

The Chair is prepared to rule on the point of order. I appreciate the fact that the gentleman from the 77th gave me the heads up on this particular point of order to be raised so that I could do a little bit of research in order to be able to act on this in a relatively timely fashion. In checking with the previous Rulings of the Chair there is no clear case on this issue at all. There is no item where we refer to changing an appropriation into a tax exemption or taking a tax exemption and changing it into something else. There just isn't a case that has ever come before the Assembly that deals with this issue, so this will be precedent ruling on this particular issue. I did consult with Peter Dykman in trying to better understand exactly where we go with this matter. His memo to me dealt with the fact that there is no clear answer to your question regarding germaneness of an amendment adding a tax exemption to a new bill.

The gentleman from the 77th pointed to Section 13.52(6), which clearly, if the bill is introduced with a tax exemption in it, it is required to go to the Joint survey committee on Tax Exemptions and there must be a report before we can take it up for consideration. Nowhere in the bill do I find a tax exemption; therefore it is not bound by Section 13.52(6).

The gentleman pointed to Assembly Rule 54(1) which related to a different subject that would require a substantial change of the relating clause making it a different subject. When I look at both the sub and the amendment, there really are five words that differ between the sub and the amendment. For the most part the relating clause is the same. The amendment deals with financial assistance for an air carrier that operates from a hub facility, creating an airport financing committee, granting rule making authority and making an appropriation. The sub deals with a property tax exemption for an air carrier that operates from a hub facility, creating an airport financing committee, granting rule making authority and making an appropriation. So the key words here are property tax exemption versus financial assistance. There is no fiscal estimate prepared for the sub, nor is one required to be prepared for the sub, but clearly there is a fiscal estimate for the bill which results in $1.5 million.

The gentleman from the 77th also pointed to Assembly Rule 54(3)(f) dealing with expanding the scope of the bill. The sub relates to a property tax exemption and the amendment to financial assistance.

And finally, the gentleman from the 77th referred to a March 1986 ruling relating to a point of order dealing with a tax exemption bill for non-profits and then adding for-profit performing arts studios to the definition. I believe that clearly in this regard a specific

group of people is defined and the point of order noted that the amendment expanded the definition to a much larger group of people. The March 1986 ruling is really not comparable from the standpoint that we're dealing with an air carrier that operates from a hub facility creating an airport finance committee and granting rule making authority. The criteria in this matter is the same in both the sub and the amendment. The March 1986 ruling dealt with two different categories and I believe we aren't comparing apples to apples.

The gentleman went on in his point of order to talk about the issue of same subject of air carriers operating from a hub facility, creating an airport financing committee and granting rule making authority. On that, it is the actual assistance being changed to a property tax exemption which I see as just a particularized detail. He compared to Assembly Rule 54(4)(b), an amendment which accomplishes the same purpose in a different manner.

I'm glad that the gentleman allowed me the opportunity to do a little bit of research beforehand. Unfortunately the research is not crystal clear. I would point out that there was a point of order raised regarding 1991 Assembly Bill 485. I had an opportunity to have Assembly Bill 485 messaged to me as well as the amendment that brought forth the point of order. The ruling was made by Speaker Pro Tempore David Clarenbach on a point of order dealing with Assembly Bill 485 offered by Representative Kunicki and Representative Prosser. The bill included language on tax exemptions, providing a property tax exemption, sales tax exemption, issuing bonds, economic development authority, and a whole series of items. An amendment offered by Representative Wineke would have added a new component dealing with the lease of sky boxes or private luxury boxes by professional sports teams, an item not touched upon in the original bill. The Speaker Pro Tempore at that point in time ruled that the point of order was not well taken. And that ruling, in and of itself, doesn't give us a clear direction on the matter raised by the gentleman from the 77th either. It does show that there are enough examples on both sides of the matter, but no clear controlling legal authority.

It is the opinion of the Chair that the point of order raised by the gentleman from the 77th is not well taken. It is indeed an amendment that accomplishes the same purpose in a different manner. It's providing thereabouts $1.5 million in assistance to an air carrier that operates from a hub facility in Wisconsin. So I would make the ruling that the point of order is not well taken.

When a member raises a point of order, they will use a variety of criteria in the point of order and I may not necessarily agree with all the criteria. You will have, from time to time, sections of the statutes that are clearly different as in the example I gave of 1991 Assembly Bill 485. The components that were being added dealt with the lease of sky boxes or private luxury boxes — a whole series of different statutes. Now you might have a bill that deals specifically with personal care and it deals with all of those relating issues and then an amendment that would add abortion but does not include a personal care

component which goes into a whole different set of statutes. That would be a substantial expansion of the scope of the bill because it doesn't conform with the same statutes, or even the same subject matter. But there will be times — it is this Chair's opinion — and there's ample precedent that has been established, that by simply changing and going into a different section of statutes does not preclude an amendment from being germane. It's just a different area of the statutes. It will be unclear and it will really be based on the actual amendment in the bill that will be before us as to whether it will be germane or not germane based on the subject matter of the statutes. We are able now with new technology to determine whether or not the statutes relate or not with just a click of the computer mouse."

2001

Finance: referral of proposal to joint committee on
Assembly Journal, February 1, 2001, p. 59

Speaker Pro Tempore Freese ruled not well taken the point of order raised by Representative Black that Assembly Bill 3 was not properly before the Assembly because it must be referred to the joint committee on Finance before being passed by the Assembly. Speaker Pro Tempre Freese reaffirmed previous rulings and cited a ruling from the Assembly Journal of October 15, 1987 (page 424).

Germaneness: same purpose accomplished in different manner
Substitute amendment: questions of germaneness
Tax exemptions: referral of proposal to joint survey committee on
Assembly Journal, February 15, 2001, p. 94

Representative Black rose to the point of order that Assembly substitute amendment 1 to Assembly Bill 100 was not germane under Assembly Rule 54.

Speaker Pro Tempore Freese ruled the point of order not well taken. Speaker Pro Tempore Freese cited as precedent the ruling on 1999 Assembly Bill 941 which appeared on page 921 of the Assembly Journal of April 11, 2000.

Dilatory procedures
Assembly Journal, October 30, 2001, p. 491

Speaker Pro Tempore Freese ruled not well taken the point of order raised by Representative Hubler that a second motion to table Assembly amendment 1 to Assembly

Bill 579 was dilatory under Assembly Rule 69, citing a previous ruling from the Assembly Journal on October 31, 1985, pages 544–545.

Engrossment

Reconsideration motion

Assembly Journal, November 1, 2001, p. 501

Representative Ziegelbauer rose to the point of order that Assembly amendment 19 to Assembly Bill 579 was not properly before the Assembly under Assembly Rule 73 (9).

Speaker Pro Tempore Freese ruled the point of order not well taken because, after the motion for reconsideration of engrossment prevailed, there were no restrictions on the introduction of amendments.

Debate: conduct during

Assembly Journal, March 7, 2002, p. 751

Representative Carpenter rose to a point of order that Speaker Pro Tempore Freese should have recognized Representative Young prior to Representative Ladwig. Representative Young was standing immediately following the vote of passage on Assembly Bill 872.

Speaker Pro Tempore Freese stated that it has been a precedent of the Assembly that the Chair will recognize members of leadership prior to other members of the Assembly. (Assembly Rule 91)

Timeliness of point of order

Assembly Journal, May 15, 2002, special session, p. 851

Representative Freese rose to the point of order that Assembly substitute amendment 1 to Assembly Bill 1, May 2002 Special Session was not germane to the Governor's Special Session call.

Speaker Jensen ruled the point of order not timely because there were still simple amendments pending to Assembly subtitute [substitute] amendment 1 to Assembly Bill 1, May 2002 Special Session. Therefore, even if the substitute amendment was not germane to the special session call at this time, it could still be amended prior to its adoption to make it germane.

2003

Suspension of constitution or state law not permitted
Assembly Journal, January 30, 2003, p. 40

Speaker Pro Tempore Freese ruled on a parliamentary inquiry made by Representative Miller on Tuesday, January 28.

Speaker Pro Tempore Freese ruled as follows: "On Tuesday of this week Representative Miller regarding the rules and statutes that govern this Assembly made a parliamentary inquiry. I have given this much thought since I have ruled on this issue before. I think it is important to recognize that under Article IV, section 8, of the Wisconsin Constitution, the assembly is the sole and absolute decision maker on Assembly proceedings that are not set out in the Wisconsin or federal constitution. It is within the Assembly's power under Article IV, section 8, of the constitution, to permit or refuse to permit the suspension or modification of a rule of proceedings set forth in the statutes just as it can of a rule of proceedings set forth in the rules pamphlet.

In Mason's manual section 2 refers to the right to regulate procedure. The Constitutional right of a state legislature to control its own procedure cannot be withdrawn or restricted by statute, but statutes may control procedure insofar as they do not conflict with the rules of the houses or with the rules contained in the constitution. Section 3 states that the State Constitution is a limitation rather than a grant of legislative power. If not expressly or implicitly withheld, the whole legislative power of the state is committed to the legislature.

It appears that the updating of legislative proceedings in the statutes have not kept up to the updating of legislative proceedings in the rules pamphlets. The statutes appear to reflect an earlier view of the powers that are to be exercised by the assembly officers.

On January 15, 1998 I had to rule on a point of order whether the motion to withdraw Assembly Bill 421 from the joint survey committee on Retirement Systems was not in order. Section 13.50 (6) was created in 1963 as Chapter 153, laws of 1963 as 13.44 (9) with the exact wording as it appears today. In 1977, through Assembly Resolution 6, Assembly rule 26 was first created which is our current rule 15 (1). I ruled that when the Statute and the rule are the same that we could suspend the rule but not the statute. If the rule and constitution were the same but the statute was different, the constitution and rule would be the precedent. If the rule and the statute were not the same, it would require a point of order to clarify which one has precedent at the time on an individual basis."

Privileged resolution

Assembly Journal, February 20, 2003, p. 75

Representative Black submitted a resolution, LRB - 2058, relating to: requesting the secretary of employment relations to submit to the assembly immediately for immediate calendaring bills ratifying all state employee collective bargaining agreements that have been ratified by state employee labor organizations.

Speaker Pro Tempore Freese ruled that the resolution was not privileged under Assembly Rule 43.

Representative Black appealed the ruling of the Chair.

Speaker Pro Tempore Freese ruled that there was no point of order to appeal under Assembly Rule 62 (6).

Representative Black rose to the point of order that the resolution was privileged under Assembly Rule 43.

Speaker Pro Tempore Freese ruled that the resolution was not privileged as defined by Assembly Rule 43.

Representative Black rose to the point of order that the resolution was privileged under Assembly Rule 43.

Speaker Pro Tempore Freese ruled that, under Assembly Rule 43, the resolution did not relate to the officers, members, former members, procedures, or organization of the Assembly or Legislature. Speaker Pro Tempore Freese also ruled that the point of order was not timely under Assembly Rule 62 (4).

Timeliness of point of order

Assembly Journal, November 13, 2003, p. 544

In response to a parliamentary inquiry from Representative Schneider, Speaker Pro Tempore Freese stated that, had a point of order been raised when Assembly Joint Resolution 52 was before the Assembly on Wednesday, November 12, he would have ruled the joint resolution out of order under Assembly Rule 39 (1) because it contained language calling on the Wisconsin congressional delegation. Because no point of order was raised at that time, Speaker Pro Tempore Freese stated that the adoption of the joint resolution was proper.

Special order: scheduling proposal as

Assembly Journal, March 9, 2004, p. 813

Representative Richards rose to the point of order that the regular order of business on

today's calendar was not properly before the Assembly under Assembly Rule 32 (3)(a) because there were special orders of business on the calendar that take precedence. [. . .]

[. . .] Speaker Pro Tempore Freese ruled that since the times for the Special Orders of Business had passed, the proposals had lost precedence over the regular order of business on today's calendar but did not lose the special order of business status.

2005

Special order: scheduling proposal as
Assembly Journal, January 27, 2005, p. 49

Representative Richards rose to the point of order that pursuant to Assembly Rule 32, the Assembly needed to proceed to the Special Order of Business on today's calendar. Speaker Pro Tempore Freese ruled that since the times for the Special Orders of Business had passed, the proposals had lost precedence over the regular order of business on today's calendar but did not lose the special order of business status.

Motions: proper time for making
Veto review session: conduct of
Assembly Journal, September 20, 2005, pp. 469–470

Representative Richards rose to the point of order that the vote to override the partial Item Veto C-4 (Nursing Home Rate Increase) of Assembly Bill 100 needed 65 votes for a two-thirds majority pursuant to Article V, Section 10 of the Wisconsin Constitution because there were 97 members present for the Call of the roll under the first order of business.

Representative Richards rose to the point of order that the vote to override the partial Item Veto C-4 (Nursing Home Rate Increase) of Assembly Bill 100 was sustained because all members present must vote under Assembly Rule 77 and, therefore, two-thirds required 65 votes. [. . .]

[. . .] Representative Gard stated that a point of order may not be raised while a motion to adjourn is before the Assembly pursuant to Assembly Rule 62 (1).

Representative Gard stated that a point of order regarding the vote to override partial Item Veto C-4 (Nursing Home Rate Increase) of Assembly Bill 100 was not properly before the Assembly under Assembly Rule 50 because the partial veto was immediately messaged to the Senate.

Veto review session: conduct of
Assembly Journal, September 27, 2005, pp. 493–494

Representative Travis rose to the point of order that item veto C-8 of Assembly Bill 100 was not properly before the Assembly because it would violate s. 20.003 (4) of the Wisconsin Statutes. [. . .]

[. . .] Speaker Pro Tempore Freese ruled not well taken the point of order raised by Representative Travis because Item Veto C-8 of Assembly Bill 100 was properly before the Assembly under Article V, Section 10 of the Wisconsin Constitution.

Absence from daily session: leave required
Assembly Journal, May 4, 2006, extraordinary session, p. 1126

Representative Travis made a parliamentary inquiry regarding the leave of absence for Representative Albers during the Call of the Assembly. Representative Travis stated that he had seen Representative Albers and that since she was in the Assembly Chambers, under Assembly Rule 77 it was mandatory for her to vote on the question of Concurrence of Senate Joint Resolution 5. Speaker Pro Tempore Freese stated that when a member is absent with leave, it is the members responsibility to request that the leave of absence be lifted. He further stated that during a Call of the Assembly, no one may request a leave of absence nor can someone's leave be lifted. Representative Hubler inquired further asking if the Sergeant-at-Arms had allowed Representative Albers to leave during a Call of the Assembly. The Sergeant-at-Arms stated that no member was allowed to leave during a Call of the Assembly.

2007

Emergency statement (to pass appropriation bill before budget)
Assembly Journal, May 9, 2007, p. 172

Representative Black rose to the point of order that Assembly Bill 207 is not properly before the Assembly because there is no emergency statement attached pursuant to s. 16.47 (2) of the Wisconsin Statutes.

Speaker Pro Tempore Gottlieb ruled the point of order not well taken because the bill does not have an appropriation.

Budget bills

Emergency statement (to pass appropriation bill before budget)

Assembly Journal, September 25, 2007, p. 285

On Tuesday, September 18th (page 278 of the Assembly Journal), Representative Schneider rose to a point of order that Assembly Bill 506 was not properly before the Assembly because it required an emergency statement pursuant to s. 16.47(2) of the Wisconsin Statutes.

Speaker Pro Tempore Gottlieb ruled the point of order not well taken. The full text of the ruling by the Speaker Pro Tempore Gottlieb follows:

"The Gentleman from the 72nd raised a point of order that, under section 16.47(2) of the statutes, this bill, Assembly Bill 506, is not properly before the body because it is an appropriation bill over $10,000 and it does not have the required emergency statement.

I find the point of order to be not well taken.

We assume the normal case. Usually the budget bill is an executive budget bill. But I think it's clearly understood that that doesn't have to be the case, that we can pass a budget bill that is not the executive budget bill. That has happened in previous sessions when we passed a legislative budget bill.

I think it is also clearly understood that if we were to pass a complete and entire legislative budget bill, that that would not require an emergency statement because it would be the budget bill.

So, the question here is whether Assembly Bill 506 is, or is not, a budget bill. If it is an appropriation bill but not a budget bill, then the Gentleman from the 72nd's point is well taken. But if it is, in fact, a legislative budget bill, then the point of order would not be well taken.

The Gentleman from the 72nd made the point that it just so happens that the bill appropriates over half of the state general fund budget, and that it could just as easily be a bill to just fund the Arts Board, or that it could be a bill for a $10,001 appropriation. I think therein lies the issue of how we interpret the question of whether this is, in fact, a budget bill.

There are certain things that argue in favor of making a determination that this is, in fact, a legislative budget bill.

The first one is that it appropriates a significant percentage of state money for the coming biennium.

Second, we should also look at the legislative intent and the intent of the authors of the bill. The authors of the bill have been clear in their intent that what they are introducing here, and bringing before the body, is a legislative budget bill.

There is also historic precedent for considering this to be a legislative budget bill. In 1971, the budget conference committee got bogged down on the governor's budget bill, 1971 Assembly Bill 414. While the conference committee was still meeting, senate members of the conference committee introduced 1971 Senate Bill 805. This bill addressed only general school aids and property tax relief. It was introduced as a budget bill and passed the Senate. The Senate Journal does not indicate that there was an emergency statement attached to the bill. The Assembly acted on this bill by passing an assembly substitute amendment that contained the entire state budget. It was eventually passed by the Senate as well. The 1971–73 biennial budget, therefore, originated in a bill that was passed by the Senate while the budget conference committee was still negotiating the governor's budget bill. The governor's budget bill, Assembly Bill 414, was recorded in the journal as failed to pass.

Clearly, the legislature has the authority to enact a legislative budget bill without an emergency statement. It is, likewise, clear that Assembly Bill 506 is intended to be a legislative budget bill.

It is, for all these reasons, that the chair rules the point of order raised by the Gentleman from the 72nd is not well taken."

Messaging bill to the other house or to the governor

Assembly Journal, February 26, 2008, p. 547

On January 15, Representative Travis made a parliamentary inquiry regarding the messaging of Assembly action on 2007 Assembly Bill 377 to the Senate. Speaker Pro Tempore Gottlieb's response to Representative Travis is as follows:

Dear Representative Travis:

This is in response to your inquiry regarding the messaging of Assembly action on 2007 Assembly Bill 377 to the Senate.

Two rules are particularly relevant to the question of messaging.

Rule 50(1) states that "Each proposal that passes or is adopted after a 3rd reading...shall be transmitted...to the senate immediately after failure of any motion to reconsider the passage, adoption, or adverse disposition, as applicable, or the expiration of the time for making such a motion."

Rule 73(3) (a) states that "A motion for reconsideration of the vote by which a proposal is

passed...may be entered: 1) before the relating clause of the next proposal is read by the clerk, the next order of business is announced by the presiding officer, or other business is begun; or 2) on the 7th order of business on the next legislative day thereafter. Any motion to reconsider such final action shall be taken up immediately if the roll call day on which it is entered is already the next actual day following the vote constituting final action on the proposal."

Assembly Bill 377 was passed by the Assembly on January 23, 2008. The motion to suspend the rules for immediate messaging was defeated. Consequently, the bill would be messaged after the time for reconsideration had passed, which would be after the 7th order of business on the next legislative day.

The next legislative days following January 23, 2008 were January 24, January 25, January 29, January 31, February 19, and February 21. However, on each of those days, the Assembly adjourned before the 7th order of business was reached, thus preventing a motion to reconsider from being made. To treat any of those days as the expiration of time for reconsideration would effectively deprive members of the opportunity for reconsideration, since the time for the making of such a motion was never reached.

Consequently, I anticipate that Assembly Bill 377 will be messaged to the Senate at the completion of the 7th order of business on February 26, 2008, assuming that order is reached before adjournment.

Sincerely,
Mark Gottlieb

Dilatory procedures

Assembly Journal, March 11, 2008, p. 656

Representative Vos rose to the point of order that Assembly amendment 1 to Assembly Bill 862 was not properly before the Assembly because it was dilatory pursuant to Assembly Rule 69.

Speaker Pro Tempore Gottlieb ruled the point of order well taken.

"Assembly Rule 69 grants the presiding officer the power to declare any motion or procedure that he or she believes is being used for the purpose of delay dilatory and out of order. In this instance, the procedure in question is the offering of an amendment to a proposal that accomplishes a purpose that is already accomplished in the proposal. If amendments are offered to proposals that accomplish the same purposes as the proposals in the same manner as the purposes are accomplished in the proposals, then the offering of such amendments is a dilatory procedure and is out of order."

Finance: referral of proposal to joint committee on
Assembly Journal, April 28, 2009, p. 156

Representative Gottlieb rose to the point of order that Senate Bill 161 is not properly before the Assembly pursuant to Wisconsin Statutes 13.093 (3) and 16.47 (2) because it needed to be referred to the joint committee on Finance.

Speaker Pro Tempore Staskunas ruled the point of order not well taken.

"Senate Bill 161 doesn't need to go to the joint committee on Finance because bills only need to go to the joint committee on Finance if there is an appropriation involved.

This bill just sets up the mechanism for the county to reimburse the state for providing these oversight services in order to make this function revenue neutral. Since the bill is revenue neutral there is no need for the bill to go to the joint committee on Finance.

Also, it does NOT need an Emergency Statement because a bill only needs an emergency statement if it has a fiscal impact of more then $10,000. There are 4 fiscal notes on the bill, 3 of them are indeterminate and the 4th says there is no fiscal impact.

Therefore it does not meet the requirements of an Emergency Statement."

Germaneness: expanding scope of the proposal
Germaneness: nature or purpose of proposal
Assembly Journal, September 22, 2009, pp. 400–401

Representative Black rose to the point of order that Assembly amendment 7 to Assembly Bill 138 was not germane under Assembly Rule 54.

Speaker Pro Tempore Staskunas ruled the point of order well taken.

"As provided under Assembly Rule 54 (1), an amendment is not germane if it "is intended to accomplish a different purpose" than that of the original bill. Assembly Bill 138 is narrowly drafted to eliminate the Governor's authority to appoint the Secretary of the DNR and return that power to the Natural Resources Board. The bill also provides that a seat on the Natural Resources Board becomes vacant when the term associated with that position expires. The amendment relates to qualifications for the Governor's appointment for members of the Natural Resources Board. It is clear that the amendment has a different intent than the original proposal.

Again under Assembly Rule 54 (1), an amendment is also not germane if it would require, if adopted and passed, a new relating clause for the proposal which would be "substantially

different from the proposal's original relating clause." Since the amendment has been introduced as Assembly Bill 84, we can see how the relating clause would need to be altered if this amendment were adopted.

Finally, it is clear that the amendment would substantially expand the scope of the bill and is, therefore, not germane under Assembly Rule 54 (3)(f).

For all of these reasons, I must agree with the gentleman's point of order that the amendment is not germane."

Substitute amendment: questions of germaneness
Assembly Journal, February 16, 2010, p. 660

Representative Gottlieb rose to the point of order that Assembly substitute amendment 1 to Assembly Bill 447 was not germane under Assembly Rule 54 (1) and 54 (4)(d).

Speaker Pro Tempore Staskunas ruled the point of order not well taken. The full text of the ruling by Speaker Pro Tempore Staskunas follows:

"Under AR 54 (2), the presiding officer has the authority to rule on the admissibility of any assembly amendment or assembly substitute amendment when the question of germaneness is raised. AR 54 provides a number of tests to help the presiding officer determine whether or not an amendment is germane.

The sub does change the relating clause. However, a change in the relating clause is not necessarily enough to determine that an amendment is not germane because AR 54 (1) specifies that the change to the relating clause must be "substantially different" for an amendment to not be germane. "Substantially" is not defined in the rules and is therefore left to the judgment of the presiding officer. On this point, I refer to a ruling made by former Speaker Pro Tempore Freese on November 1, 2001. ASA 1 to 2001 AB 579 made significant changes to the relating clause of the original bill. However, the Chair ruled that the changes did not reach the level of "substantially different."

The sub does expand the scope of the bill. However, AR 54 (3)(f) again uses the word "substantially" and specifies that an amendment must substantially expand the scope of the proposal in order to not be germane. On this point, I specifically point to the germaneness rulings on ASA 1 to 2003 AB 4, ASA 1 to 2001 AB 579, AA 17 to 1999 AB 465, ASA 2 to 1999 AB 941, and ASA 1 to 1981 AB 590. For more information, please refer to the Assembly Journals.

The original bill was introduced for the purpose of regulating the payday lending industry. The sub regulates the payday lending industry in a different manner. Therefore, the sub meets the test under AR 54 (4)(b).

The sub does amend a chapter of the statutes that is not referenced in the original bill. However, there is nothing in the rules that specifically prohibits an amendment from amending sections of the statutes that are not referenced in the original bill. In this case, the changes to Section 20.144 will allow the Department of Financial Institutions to fulfill an important role in the regulation of the payday lending industry.

The sub provides an appropriation necessary to regulate the payday lending industry. Therefore, the sub meets the test under AR 54 (4)(d).

The sub relates to the particularized details of regulating the payday lending industry. Therefore, the sub meets the test under AR 54 (4)(e).

In conclusion, I find the gentleman's point of order not well taken."

2011

Proceedings of other house given full faith and credit in this house
Assembly Journal, March 15, 2011, special session, p. 194

On Thursday, March 10 (page 189 of the Assembly Journal), Representative Richards rose to a point of order that January 2011 Special Session Assembly Bill 11 was not properly before the Assembly because the Senate needed a special quorum for passage of fiscal bills pursuant to Article VIII, Section 8 of the Wisconsin Constitution.

Speaker Pro Tempore Kramer ruled the point of order not well taken. The full text of the ruling by Speaker Pro Tempore Kramer follows:

"On Thursday, March 10th, Representative Richards raised a point of order that January 2011 Special Session Assembly Bill 11 was not properly before the Assembly because the Senate needed a special quorum for passage of fiscal bills pursuant to Article VIII, Section 8 of the Wisconsin Constitution.

It is the opinion of the Chair that the point of order is not well taken pursuant to Assembly Rule 62(5), which plainly states "*[a] point of order questioning the validity of a senate action on a proposal before the assembly is not in order*."

Additionally, the Chair finds that the point is not well taken because each house of the legislature is the judge of its own procedures, as established by past precedents, Article IV, Section 8 of the Wisconsin Constitution, State ex rel. LaFollette vs. Stitt, and under the provisions of sections 3 [3-p] and 17 [17-s] of Jefferson's Manual [one house not to question validity of actions by other house]."

Conference committee: procedures relating to
Assembly Journal, March 17, 2011, special session, p. 196

On Thursday, March 10 (page 190 of the Assembly Journal), Representative Richards rose to a point of order that January 2011 Special Session Assembly Bill 11 was not properly before the Assembly because the Committee of Conference report on January 2011 Special Session Assembly Bill 11 was changed from last night to today due to Legislative Reference Bureau Corrections and Fiscal Bureau documents.

Speaker Pro Tempore Kramer ruled the point of order not well taken. The full text of the ruling by Speaker Pro Tempore Kramer follows:

"On Thursday, March 10th, Representative Richards raised a point of order that January 2011 Special Session Assembly Bill 11 was not properly before the Assembly because the Committee of Conference report on January 2011 Special Session Assembly Bill 11 was changed from last night to today due to Legislative Reference Bureau Corrections and Fiscal Bureau documents.

It is the opinion of the Chair that the point of order is not well taken pursuant to Assembly Rule 36 and Joint Rule 56 which allow for clerical corrections to be made by the Chief Clerk and the Legislative Reference Bureau to legislative proposals."

Timeliness of point of order
Assembly Journal, May 11, 2011, p. 297

Representative Staskunas rose to the point of order that Assembly substitute amendment 2 to Assembly Bill 7 was not germane under Assembly Rule 54 (3)(f).

Speaker Pro Tempore Kramer ruled the point of order not timely because there were still simple amendments pending to Assembly substitute amendment 2 to Assembly Bill 7.

Germaneness: nature or purpose of proposal
Substitute amendment: questions of germaneness
Assembly Journal, May 11, 2011, pp. 311–312

Point of Order

Representative Staskunas rose to a point of order that Assembly substitute amendment 2 to Assembly Bill 7 was not germane under Assembly Rule 54 (3)(f).

Pursuant to a unanimous consent request by Representative Staskunas, his remarks have been entered into the Assembly Journal.

"Mr. Speaker, I didn't want to rise on the point of order that Assembly Substitute Amendment 2 is not germane to Assembly Bill 7 under Assembly Rule 54. I felt I owed it to you.

Assembly Rule 54 (1) states, "The Assembly may not consider any Assembly amendment or Assembly substitute amendment that relates to a different subject or is intended to accomplish a different purpose than that of the proposal to which it relates or that, if adopted and passed, would require a relating clause for the proposal which is substantially different from the proposal's original relating clause or that would totally alter the nature of the proposal."

The amendment's relating clause is clearly substantially different. The original bill did not relate to late voter registration, a requirement for electors to provide a signature when voting in person at an election, the duration and location of residency for voting purposes, voting a straight party ticket, voter registration information, the statewide voter registration list, or voter registration activities. Those are seven items that were not in the original relating clause.

In addition to the dramatic changes to the relating clause, the amendment substantially expands the scope of the proposal in violation of Assembly Rule 54 (3)(f). The amendment repeals, amends or creates seventeen sections of the statutes that were not referenced in any way in the original bill. Discounting simple cross-references in the original bill, the amendment repeals, amends or creates twenty-five sections of the statutes that were not referenced in the original bill.

Since the amendment dramatically changes the relating clause while radically expanding the scope of the proposal, I hope that you will find the amendment not germane under Assembly Rule 54."

Ruling on the Point of Order

Speaker Pro Tempore Kramer ruled the point of order not well taken. The full text of the ruling by Speaker Pro Tempore Kramer follows:

"Representative Staskunas rose to the point of order that Assembly substitute 2 amendment to Assembly Bill 7 was not germane to the original relating clause under Assembly Rule 54 (1) generally, and specifically rule 54 (3)(f).

Prefacing his ruling, as Assembly substitute amendment 1 was the bill under consideration by the Joint Finance Committee, and Assembly substitute amendment 2 was the bill under consideration by the full Assembly, Speaker Pro Tempore Kramer briefly explained that several items were removed from ASA 1 to become ASA 2:

· MOVE Act (federal military access)

· Moving the September partisan primary date

· ASA 2 defined residency

· ASA 2 provided conforming language on college identification

Speaker Pro Tempore Kramer ruled the point of order not well taken because the amendment under consideration did not expand the scope of the legislation, but rather narrowed the scope of the bill and was proper under Rule 54 (4)(c). The rule cited in the point of order [Rule 54 (1)] states, "The Assembly may not consider any assembly amendment or assembly substitute amendment that relates to a different subject or is intended to accomplish a different purpose than that of the proposal to which it relates or that, if adopted and passed, would require a relating clause for the proposal which is substantially different from the proposal's original relating clause or that would totally alter the nature of the proposal."

Specifically, Assembly substitute amendment 2, the successor legislation to Assembly substitute amendment 1, which was adopted in the Assembly Committee on Elections and Campaign Reform, doesn't accomplish a different purpose or relate to a different subject because of the fact that the purpose and subject of both the bill and the substitute amendment are to create a photo identification requirement for voting at elections. This is the primary purpose of the bill and the substitute amendment does not change this purpose at all. Thus Assembly substitute amendment 2 is also clearly germane and in accordance with Rule 54 (4)(b).

Further, the substitute amendment does not actually "require" a substantially different relating clause. Both the bill and the substitute amendment could have had a broader and more general relating clause that would have effectively described the subject of the bill and substitute amendment. Instead, it was the bill drafter's judgment to describe the bill and substitute amendment in greater detail. Each Legislative Reference Bureau drafter decides by his or her own judgment what amount of detail to include in a relating clause. And, different drafters have different approaches to constructing relating clauses. For example, Assembly Bill 86 relating to early release has a relating clause consisting of a grand total of three words. It is therefore reasonable to expect different drafters, on occasion, to use more extensive or descriptive relating clauses.

Nonetheless, it is ultimately up to the Assembly to determine the appropriateness of the relating clause for germaneness purposes under Rule 54."

Germaneness: same purpose accomplished in different manner
Substitute amendment: questions of germaneness
Assembly Journal, May 17, 2011, pp. 334–335

Point of Order

Representative Richards rose to a point of order that Assembly substitute amendment 1 to Assembly Bill 96 was not germane under Assembly Rule 54 (3)(f).

Pursuant to a unanimous consent request by Representative Richards, his remarks have been entered into the Assembly Journal.

"Mr. Speaker, I rise on the point of order that Assembly Substitute Amendment 1 to Assembly Bill 96 is not germane under Assembly Rule 54 and may not be considered by the body.

As originally introduced, Assembly Bill 96 was limited to the composition of the Board of Veterans Affairs, the transfer of the power to appoint the Secretary of Veterans Affairs from the Board to the Governor, and rule making authority. The substitute amendment makes those changes as outlined in the original bill.

However, the amendment also expands the scope of the bill by specifying that the Department of Veterans Affairs will no longer be under the direction and supervision of the Board but instead be under the direction and supervision of the Secretary. By fundamentally changing the authority of the Board over the Department in a way that was not referenced or even suggested in the original bill, the substitute amendment substantially expands the scope of the bill and is, therefore, not germane under Assembly Rule 54 (3)(f).

This expansion of the bill also required the drafting attorney to create two new sections of the statutes that were not created by the original bill. Specifically, I refer to sections 6 and 8 of Assembly Substitute Amendment 1 which would create sections 45.03 (2m) and 227.14 (2)(a)6m of the statutes, respectively. These sections were not necessary in the original bill because the original bill did not alter the direction and supervision of the Department of Veterans Affairs.

In addition, the substitute amendment substantially alters the relating clause by adding "direction and supervision of the Department of Veterans Affairs." The direction and supervision of the department does not fall under the scope of the original relating clause, and the amendment is, therefore, prohibited under Assembly Rule 54 (1).

Mr. Speaker, you are the presiding officer. These are your rules. And your rules dictate that the amendment is not germane."

Ruling on the Point of Order

Speaker Pro Tempore Kramer ruled the point of order not well taken. The full text of the ruling by Speaker Pro Tempore Kramer follows:

"Representative Richards rose to the point of order that Assembly substitute amendment 1 to Assembly Bill 96 was not germane to the original relating clause under Assembly Rule 54 (1) generally, and specifically rule 54 (3)(f).

Both Assembly Bill 96 and Assembly substitute amendment 1 are intended to reform

the constitution of the Department of Veterans Affairs and reform its relationship to the Governor. As noted in Representative Richard's point of order,

"As originally introduced, Assembly Bill 96 was limited to the composition of the Board of Veterans Affairs, the transfer of the power to appoint the Secretary of Veterans Affairs from the Board to the Governor, and rule making authority. The substitute amendment makes those changes as outlined in the original bill.

However, the amendment also expands the scope of the bill by specifying that the Department of Veterans Affairs will no longer be under the direction and supervision of the Board but instead be under the direction and supervision of the Secretary. By fundamentally changing the authority of the Board over the Department in a way that was not referenced or even suggested in the original bill, the substitute amendment substantially expands the scope of the bill and is, therefore, not germane under Assembly Rule (3)(f)."

Representative Richards' own concerns are the basis for the following ruling:

Speaker Pro Tempore Kramer ruled the point of order not well taken because the amendment under consideration accomplishes the same purpose as the unamended Assembly Bill 96 but in a different manner in accord with Assembly Rule 54 (4)(b)."

Budget bills

Germaneness: amendment to amendment

Assembly Journal, June 14, 2011, extraordinary session, pp. 393–394

Representative Staskunas rose to the point of order that Assembly amendment 1 to Assembly amendment 1 to Assembly substitute amendment 1 to Assembly Bill 40 was not germane pursuant to Assembly Rule 54 (5).

Speaker Pro Tempore Kramer ruled the point of order not well taken. The full text of the ruling by Speaker Pro Tempore Kramer follows:

"Representative Staskunas rose to the point of order that Assembly Amendment 1 to Assembly Amendment 1 to Assembly Substitute Amendment 1 to Assembly Bill 40 is not germane to Assembly Amendment 1 to Assembly Substitute Amendment 1 to Assembly Bill 40. Specifically, Representative Staskunas cited Assembly Rule 54(5).

Assembly Rule 54(5) states, "An amendment to an amendment must be germane to both the amendment and the original proposal."

However, throughout the history of this body, split houses of the State Legislature, as they move budgets toward passage, have used simple amendments as vehicles to introduce particularized details into the state's biennial budgets.

Similarly, conference committee amendments contain provisions in the form of a simple amendment and can include both the inclusion and removal of particular items.

Further, in the amendment in question, provisions have been removed in addition to the inclusion of new provisions.

Therefore, the point of order is not well taken."

Constitutionality of proposal (chair cannot rule on)
Assembly Journal, July 20, 2011, extraordinary session, pp. 450–451

Representative Staskunas rose to the point of order that Senate Bill 148 is not properly before the Assembly because it violates the Voting Rights Act of 1965 and the United States Constitution. [. . .]

[. . .] Speaker Pro Tempore Kramer ruled the point of order not well taken. The full text of the ruling by Speaker Pro Tempore Kramer follows:

"The actions of the legislature in enacting statutes are presumed to be constitutional unless found to be unconstitutional in a final adjudication by a court of competent jurisdiction."

Germaneness: same purpose accomplished in different manner
Substitute amendment: questions of germaneness
Assembly Journal, October 27, 2011, p. 623

On Tuesday, October 25 (page 607 of the Assembly Journal), Representative Ziegelbauer rose to the point of order that Assembly Substitute Amendment 1 to Assembly Bill 93 was not germane, citing, generally, Assembly Rule 54 and that the amendment in question significantly expanded the scope of Assembly Bill 93.

Assembly Rule 54 states, "(1) General statement: The assembly may not consider any assembly amendment or assembly substitute amendment that relates to a different subject or is intended to accomplish a different purpose than that of the proposal to which it relates or that, if adopted and passed, would require a relating clause for the proposal which is substantially different from the proposal's original relating clause or that would totally alter the nature of the proposal."

Representative Kramer found the point of order not well-taken under Assembly Rule 54 (4)(b), that finds an amendment germane when it "accomplishes the same purpose in a different manner".

Timeliness of point of order
Assembly Journal, May 7, 2013, p. 148

Representative Richards rose to the point of order that Assembly Substitute Amendment 1 to Assembly Bill 110 was not germane under Assembly Rule 54.

Speaker Pro Tempore Kramer ruled the point of order not timely because there were still simple amendments pending to Assembly substitute amendment 1 to Assembly Bill 110.

Germaneness: same purpose accomplished in different manner
Substitute amendment: questions of germaneness
Assembly Journal, May 7, 2013, p. 149

Representative Richards rose to the point of order that Assembly Substitute Amendment 1 to Assembly Bill 110 was not germane under Assembly Rule 54.

Speaker Pro Tempore Kramer ruled the point of order not well taken. The full text of the ruling by Speaker Pro Tempore Kramer follows:

"After consideration of your point of order that Assembly Substitute Amendment 1 to Assembly Bill 110 is not germane under various provisions of Assembly Rule 54, I find that:

ASA 1 does not change the "purpose" of AB 110 — Both seek to limit the foods that may be purchased under the FoodShare program.

Further, the bill achieves this purpose by requiring Department of Health Services to implement a pilot program, while the substitute amendment achieves this purpose by creating a permanent, state-wide program. It is within the power of the legislature to determine the manner in which the purpose of a program will be achieved and to choose whether a purpose should be achieved by a pilot program or a statewide program.

And lastly, the substitute amendment does not create a new purpose that is not in the bill or deal with a matter that is extraneous to the bill. Thus, the substitute amendment does not expand the scope of the proposal, but rather seeks to achieve the same purpose of the bill in a different manner.

Therefore, I find your point of order not well taken."

2015

Germaneness: expanding scope of the proposal
Assembly Journal, May 22, 2015, p. 179

On Wednesday, May 13 (page 167 of the Assembly Journal), Representative Kapenga rose to a point of order that Assembly Amendment 15 to Assembly Bill 192 was not germane under Assembly Rule 54 (3)(f).

Speaker Pro Tempore August ruled the point of order well taken. The full text of the ruling by Speaker Pro Tempore August follows:

"Representative Hebl contended that Assembly Amendment 15 to Assembly Bill 192 was germane under Assembly Rule 54 (4)(e). Assembly Bill 192 generally adds a requirement for certain unemployment insurance claimants to submit drug tests to receive claims. Assembly Amendment 15 to Assembly Bill 192 seeks to expand drug testing to a group of individuals who, at the time of the claimant testing, would not be eligible to become a claimant under current unemployment insurance law. Assembly Amendment 15 to Assembly Bill 192 is certainly not covered by Assembly Rule 54 (4)(e) as the amendment does in fact seek to make changes beyond particularized details. The amendment seeks to expand the testing well outside of the unemployment insurance program. This clearly substantially expands the scope of the bill. I find Representative Kapenga's point of order well taken."

Germaneness: limiting scope of proposal
Germaneness: same purpose accomplished in different manner
Substitute amendment: questions of germaneness
Assembly Journal, October 1, 2015, p. 302

On Thursday, September 24, (page 293 of the Assembly Journal), Representative Hebl rose to a point of order that Assembly Substitute Amendment 1 to Assembly Bill 325 was not germane under Assembly Rule 54. The text of that point of order follows:

"Mr. Speaker, I rise on the point of order that Assembly Substitute Amendment 1 to Assembly Bill 325 is not germane and, therefore, not properly before the body.

While most of the sections of ASA 1 either limit the scope of the bill or accomplish the same purpose of the bill in a different manner, Sections 9 and 11 add new purposes to the bill to require primary elections for school board members in certain district and require the adoption of an apportionment plan after the decennial census. As a result, ASA 1 expands the scope of AB 325. It is, therefore, not germane under Assembly Rule 54 (3)(a) and 54 (3)(f).

Furthermore, the last two clauses of the relating clause of ASA 1 are wholly unrelated and "substantially different" to the relating clause of the original bill, as prohibited under Assembly Rule 54 (1). These changes "totally alter the nature of the proposal," again in violation of Assembly Rule 54 (1).

Section 9 and 11 of ASA 1 are not "a specific provision amending a general provision," "accomplishing the same purpose in a different manner," "limiting the scope of the proposal," "adding appropriations necessary to fulfill the original intent of the bill," and "relating only to particularized details."

It is also important to note that Section 11 of ASA 1 amends statutes created by the 2015–17 state budget and that AB 325 was circulated for cosponsors more than six weeks after the budget was signed into law. So, if the changes in section 11 of the amendment were part of the original intent of the bill, the author, the gentleman from the 62nd, had ample opportunity to include that provision in his original bill. He did not.

Now, because of the inclusion of Sections 9 and 11, this substitute amendment is not germane and not properly before this body.

Thank you, Mr. Speaker."

Speaker Pro Tempore August ruled the point of order not well taken. The full text of the ruling by Speaker Pro Tempore August follows:

"After consideration of your point of order that Assembly Substitute Amendment 1 to Assembly Bill 325 is not germane under various provisions of Assembly Rule 54, I find that:

It is the opinion of the Chair that the point of order is not well taken pursuant to Assembly Rule 54 4(b) and 54 4(c)."

Reconsideration motion

Assembly Journal, October 26, 2015, pp. 350–351

On Wednesday, October 21, (page 341 of the Assembly Journal), Representative Barca rose to the point of order that reconsideration of the vote by which Assembly Bill 387 was engrossed required a 2/3 vote.

Speaker Pro Tempore August ruled the point of order not well taken. The full text of the ruling by Speaker Pro Tempore August follows:

"Representative Barca raised a point of order that the motion to reconsider engrossment of Assembly Bill 387 made by Representative Steineke had not passed because two-thirds of members present had not voted aye. Representative Barca pointed to Assembly Rule 33

(4) which states, in part, "The motion to advance the proposal to its 3rd reading and the motion to message the proposal to the other house may be adopted by a majority of the members present and voting."

Representative Barca correctly points out that advancing a proposal under a special order of business or messaging a proposal under a special order of business to the other house requires a majority of members voting. Assembly Rule 33 (4) makes this clarification due to the fact that under a normal order of business, advancing a proposal to its 3rd reading or messaging a proposal to the other house on the same legislative day requires a suspension of the rules motion, which requires a 2/3 vote.

Assembly Rule 33 is silent on what threshold is required to reconsider any action on a special order of business. Because this rule is silent on the matter, consulting Assembly Rule 76 is necessary. Assembly Rule 76 (1) states "Unless otherwise required by the state constitution, by law, or by legislative rule, all questions are decided by a majority of a quorum."

After a review of the state constitution, state law, and Assembly Rules, there are no additional requirements placed on thresholds required for a motion to reconsider to prevail. Therefore all questions relating to reconsidering an action on a proposal are decided by a majority of a quorum. Representative Steineke's motion to reconsider engrossment of Assembly Bill 387 clearly and without ambiguity achieved more than a majority of the quorum present. Therefore I find Representative Barca's point of order not well taken."

Germaneness: specific provision amending a general provision
Assembly Journal, February 23, 2016, p. 763

On Thursday, February 18 (page 753 of the Assembly Journal), Representative Hebl rose to the point of order that Assembly Amendment 1 to Senate Bill 615 was not germane under Assembly Rule 54 (3)(f).

Speaker Pro Tempore August ruled the point of order not well taken. The full text of the ruling by Speaker Pro Tempore August follows:

"After consideration of your point of order that Assembly Amendment 1 to Senate Bill 615 is not germane under Assembly Rule 54 (3)(f), I find that:

It is the opinion of the Chair that the point of order is not well taken pursuant to Assembly Rule 54 (4)(a)."

Germaneness: expanding scope of the proposal
Germaneness: same purpose accomplished in different manner
Assembly Journal, February 12, 2019, p. 40

On Tuesday, January 22 (page 24 of the Assembly Journal), Representative Steineke rose to a point of order that Assembly Amendment 1 to Assembly Substitute Amendment 1 and Assembly Amendment 2 to Assembly Substitute Amendment 1 to Assembly Bill 1 was not germane under Assembly Rule 54 (3)(f).

Speaker Pro Tempore August ruled the point of order well taken. The full text of the ruling by Speaker Pro Tempore August follows:

"Representative Steineke rose to the point of order that Assembly Amendment 1 to Assembly Substitute Amendment 1 to Assembly Bill 1 was not properly before the body as it was non-germane under Assembly Rule 54 (3)f. [(f)].

I find the point of order well taken.

Representative Shankland contended that the amendment was germane under Assembly Rule 54 (4)b [(b)] because the amendment "accomplishes the same purpose in a different manner."

This is not the case. The amendment sought to authorize the Governor to authorize the Attorney General to withdraw from a federal lawsuit challenging the Patient Protection and Affordable Care Act. While pre-existing conditions are certainly mentioned throughout ASA1 to AB1 as well as the Patient Protection and Affordable Care Act, simply withdrawing from the federal lawsuit does not in and of itself guarantee those protections in state law. The lawsuit could and likely would continue on as the State of Wisconsin is not the only plaintiff in the case. Therefore, simply withdrawing from the lawsuit does not accomplish the same purpose of ASA1 to AB1 in a different manner.

Further, ASA1 to AB1 does not refer to the specific lawsuit referred to in AA1. ASA1 deals specifically with under what terms an insurance provider may or may not decline coverage to an individual. No mention of any federal lawsuit is made and therefore AA1 to ASA1 to AB1 is clearly non germane as it dramatically expands the scope of the bill.

Representative Steinke [Steineke] rose to the point of order that Assembly Amendment 2 to

Assembly Substitute Amendment 1 to Assembly Bill 1 was not properly before the body as it was non-germane under Assembly rule 54 (3)f. [(f)].

I find the point of order well taken.

The Dean of the Assembly Representative Sinicki contended that the amendment was in fact germane because it dealt with topics such as prescription drug coverage and women's healthcare coverage.

ASA1 to AB1 deals specifically with under what terms an insurance provider may or may not decline coverage to an individual. Nowhere in ASA1 to AB1 are the content of insurance plans mentioned. AA2 seeks to include what content must be included in insurance coverage, which is not the original intent of AB1 or ASA1 to AB1. Therefore, AA2 is clearly non-germane as it dramatically expands the scope of the bill."

Part II
Senate

1971

Debate: questions that are not debatable
Explanation of vote
Senate Journal, February 2, 1971, pp. 203–204

On Wednesday, January 20, Senator Knowles raised a question on whether a senator may explain his vote during the roll call on a non-debatable motion.

Senate rule 73 states a senator may explain his vote, upon leave of the presiding officer, when the senator's name is called in the roll. This is the established rule on debatable motions, despite the fact that debate is considered closed when the roll call commences on a debatable motion.

It is the chair's position that if a senator is allowed to explain his vote on a debatable motion, to the extent that it is not considered reopening the debate, a senator may also explain his vote on a non-debatable motion, to the same extent that debate is not opened. This is in accordance with senate rule 73.

It should be noted that senate rule 73 states that a member may explain his vote "upon leave of the presiding officer." The phrase "upon leave of the presiding officer" is interpreted to mean the presiding officer will strictly rule so that no explanation becomes an opening of debate. The length of any explanation will be a factor in determining whether such explanation is an opening of debate.

MARTIN J. SCHREIBER,
Lieutenant Governor
President of the Senate.

Voting by absent members: permitted by unanimous consent
Senate Journal, February 2-3, 1971, pp. 204–205, 211–212

On Wednesday, January 27, Senator Risser, on a point of order, argued that the journal of Tuesday, January 26, did not accurately record the action of the senate in that it did not report the unanimous consent of the senate to the recording of votes by tardy members.

I do not dispute the logic of Senator Risser's position, since the unanimous consent of the senate is recorded in the senate journal on other matters.

But I cannot ignore the long standing practice of the senate in not recording unanimous consent in this instance. If there is one objection to unanimous consent, it is so recorded. If there is no objection, unanimous consent is not recorded but its adoption in this instance, is obvious by the fact of the absent senators name is shown on the roll call.

It is the senate's prerogative, and not that of the presiding officer, to change that practice.

MARTIN J. SCHREIBER,
Lieutenant Governor
President of the Senate. [. . .]

[February 3, 1971]

[. . .] With unanimous consent Senator Keppler made a statement setting forth a policy as to journal recording of membership attendance.

Upon request of Senator Risser, with unanimous consent, this statement of policy was spread upon the journal.

A member missing the opening roll call will be recorded as present on this roll if he is present at the call of the next roll.

In the event that no subsequent roll calls are taken and a member is later present he will be recorded on the opening roll call.

If a member is absent from the chamber during a roll call he may be recorded by asking unanimous consent, if his vote does not change the result.

Fiscal estimate: required
Senate Journal, February 17, 1971, p. 315

On Wednesday, February 10, 1971 Senator Lorge raised a Point of Order that Senate Bill 88 required a fiscal note.

Joint Rule 24 requires all original measures effecting finances to have a fiscal note. Senate Bill 88 is designed only to change the procedure in handling old age assistance liens, and on the surface would not appear to require a fiscal note—but because in changing the procedure it is possible that revenues could be effected. A fiscal note should be obtained for the bill, and this will be done pursuant to Joint Rule 24 (9).

MARTIN J. SCHREIBER,
Lieutenant Governor
President of the Senate

Privileged resolution

Senate Journal, March 3, 1971, pp. 449–450

On Thursday, February 11th, Senator Risser raised the point of order that Senate Resolution 6, requesting an opinion of the Attorney General, was not privileged. The Chair took the point of order under advisement.

The chair has been unable to find a senate precedent directly in point, either in the collection of legislative precedents, or in the annotated editions of the SENATE MANUAL published in 1953 (Senate Rule 75) and 1961 (Senate Rule 69).

Senate Rule 69 reads as follows:

"Any motion or resolution relating to the organization or procedure of the senate, or to any of its officers, members or committees, shall be privileged and need not lie over for consideration."

Because the chair is unable to find any direct precedent, the chair reviewed the senate resolutions requesting Attorney General's opinions in the 1969 session for guidance.

1969 SR 6 read and adopted
1969 SR 7 read and referred to calendar
1969 SR 8 read and referred to calendar
1969 SR 9 read and referred to calendar
1969 SR 12 read and adopted
1969 SR 13 read and adopted
1969 SR 17 read and adopted
1969 SR 19 read and adopted
1969 SR 20 read and adopted
1969 SR 23 read and referred to committee
1969 SR 25 read and adopted
1969 SR 27 read and adopted
1969 SR 30 read and referred to calendar to follow questioned bill
1969 SR 33 read and adopted
1969 SR 36 read and adopted
1969 SR 38 read and adopted

The three 1969 senate resolutions referred directly to calendar were all offered by the senate committee on Judiciary, and were so referred by the presiding officer without a motion from the floor. The 1969 senate resolution referred to a committee (SR 23) was so referred on the motion of a senator. The resolution had been offered by Senator Risser; the motion to refer the resolution to the senate committee on Health and Social Services was made by Senator Cirilli, the chairman of that committee. The 1969 senate resolution placed on the calendar following the senate consideration of the bill to which it pertained (SR

30), relating to the constitutionality of 1969 (SB 143) was so placed on the motion of the resolution's sponsor, Senator Soik.

Based on the experience of the 1969 session, it appears to be the prevailing senate practice to treat resolutions requesting an opinion from the Attorney General as privileged in the sense that they are immediately considered upon their being read. However, inasmuch as Senate Rule 69 merely states that such proposals "need not lie over", it is proper to place such resolutions on the next calendar if it is the consensus of the senate that, in the case of a specific resolution, the members should be given adequate time to familiarize themselves with the content of the proposal.

Martin J. Schreiber
Lieutenant Governor
President of the Senate

Tax exemptions: referral of proposal to joint survey committee on
Senate Journal, March 18, 1971, pp. 591, 594

Senate Bill 58

Relating to agricultural classification of land for purposes of taxation.

Read a second time.

Senator Dorman raised the point of order that the bill by statute must go to the committee on Tax Exemptions.

The chair took the point of order under advisement. [. . .]

[. . .] The chair ruled on the point of order on Senate Bill 58. Since the bill involved a differential in taxes the bill by statute would have to be referred to the joint Survey committee on Tax Exemptions.

Constitutionality of proposal (chair cannot rule on)
Senate Journal, April 21, 1971, p. 708

Senator Busby raised the point of order as to the constitutionality of Senate Resolution 19. The chair ruled the point of order not well taken, as it was not within his authority to rule on the constitutionality of the resolution.

Fiscal estimate: not required
Senate Journal, May 6, 1971, p. 840

On Tuesday, May 4, Senator Hollander raised a point of order that Senate Bill 204 requires a fiscal note. The chair took the point of order under advisement.

Senate Bill 204 relates to furnishing chiropractic treatment under workmen's compensation laws.

Upon close examination of this bill it appears that the language of the bill is in terms of alternates and not duplication. In checking this matter further with the chairman of the Department of Labor, Industry and Human Relations, as to whether or not there would be additional finances involved the chairman replied, "I cannot see where this will result in an increase in staff load because the bill calls for a substitution of services." Therefore it is the opinion of the chair that Senate Bill 204 does not require a fiscal note.

MARTIN J. SCHREIBER,
Lieutenant Governor,
President of the Senate.

Germaneness: nature or purpose of proposal
Senate Journal, May 13, 1971, p. 899

On Wednesday Senator Parys introduced senate amendment 3 to Bill 76A. Senator Keppler raised the point of order that the amendment was actually a substitute amendment. He also raised the point of order that the amendment was not germane. Senator Parys asked the chair to take the points of order under advisement.

The chair has already ruled senate amendment 2 *not germane* because it "would require a title essentially different or would totally alter the nature of the original proposal." The amendment dealt with everyone's public records. It did not deal with just county records.

Amendment 3 deals with records other than county records and it allows "any person" to copy records.

The chair's ruling is that senate amendment 3 is *not germane*. This amendment is essentially the same as amendment 2 and, therefore, it is not germane for the same reason that senate amendment 2 is not germane.

CASIMIR KENDZIORSKI,
Senator, 3rd District.

Germaneness: nature or purpose of proposal
Senate Journal, May 20, 1971, p. 987

On May 19 Senator Cirilli introduced amendment 1 S to senate sub-amendment 1 S to Senate Bill 71. Senator Hollander rose to the point of order and challenged the germaneness of the amendment.

The chair took the point of order under advisement.

Senate sub-amendment 1 permits all localities to adopt ordinances against drunken driving. Amendment 1 S asks localities to adopt the burden of proof in local ordinances as the state uses in drunken driving convictions.

Therefore the chair holds the amendment germane.

C. Kendziorski.

Emergency statement (to pass appropriation bill before budget)
Senate Journal, June 17, 1971, pp. 1245–1246

On Thursday, June 10, 1971 Senate Bills 163 and 255 were withdrawn from joint committee on Finance and placed on the calendar. Senator Risser raised the same point of order on both bills that is, That each had substantial fiscal note and therefore require an emergency clause.

16.47 (2) states "no bill affecting the general fund and containing an appropriation or increasing the cost of state government or decreasing state revenues shall be passed by either house until the general fund budget bill has passed both houses;" unless an emergency statement is attached by the Governor or the joint committee on Finance.

Therefore, the chair finds the point of order well taken and these two bills shall be placed on the first calendar after passage of the budget bill unless an emergency statement is attached prior to that time.

MARTIN J. SCHREIBER,
Lieutenant Governor.

Citation: proper subject
Senate Journal, June 30, 1971, pp. 1342–1343

On Thursday, June 24th, the senate was considering citation under Joint Rule 26 relating to captive nations. Senator Robert Knowles raised the point of order that this was not a proper subject for citation under Joint Rule 26 because it may be controversial.

It is apparent after reviewing the rules and precedence previously established regarding Joint Rule 26 that this rule was never intended as vehicle to be used in bringing controversial issues before the senate body for debate.

On April 6, 1967, Lt. Governor Jack Olson ruled:

"The Chair's opinion is that the Legislature has provided very simple and convenient

means of recognizing special occasions of non-controversial nature apart from the normal legislative process. To rule otherwise would destroy this procedure."

Senate Journal page 486.

Senate Rule 26 (8) states: "Citations may not be used for procedural matters nor in place of resolutions memorializing Congress, but only when appropriate to express the feeling of the house or of the Legislature with reference to person or an event."

Other parts of this rule state that these citations may be used in place of resolutions for commendations, congratulations and condolences, and that the name of the particular person or particular occasion shall be provided to the chief clerk who shall request the Legislative Reference Bureau to draw suitable citation.

The rules and procedure of the Wisconsin State Senate clearly show that a controversial issue is not a proper subject for Joint Rule 26 Citation.

The chair, however, does not feel that it is within his prerogative to designate what is and what is not controversial. To so designate is privilege of the senate and the chair should not usurp that privilege.

The senate, when a point of order is raised as to the controversial nature of Joint Rule 26, should by majority vote determine whether or not the content of such citation is controversial.

MARTIN J. SCHREIBER,
Lieutenant Governor.

Appropriation bill (considering before budget)
Senate Journal, July 8, 1971, pp. 1409–1410

On June 22, 1971 Senator Risser raised a point of order on Senate Bill 163.

Senate Bill 163 relates to deposits in the veterans trust fund and does have fiscal note appended. Section 16.47 (2) of the statutes provides in part that a fiscal-effect bill shall not "be *passed by either house* until the general fund budget bill has passed both houses" (emphasis supplied) unless it carries an emergency clause.

The point of order raised is basically: When the statute says: . . . "shall not be *passed by either house*". . ., what is the meaning of the word "pass".

It is the chair's ruling that, without exceeding the limits set by statute section 16.47 (2) the senate can only advance fiscal-effect measure originating in the senate through the debate on 3rd reading and to the final question: "Shall the bill pass?" At that point, the proposal would have to be laid aside to await *enactment* of the general fund executive budget. When

the budget *enactment* has occurred, the senate could then immediately proceed to the taking of the roll on the question "Shall the bill pass?".

Respectfully submitted,
MARTIN J. SCHREIBER,
Lieutenant Governor.

Reconsideration motion
Senate Journal, March 3, 1972, p. 2806

On Tuesday, February 29, 1972, the senate voted to reconsider the vote by which Senate Bill 898 was passed. Following the passage of the reconsideration motion Senator Parys moved that the bill be indefinitely postponed. The chair stated such motion out of order as the question should be shall the bill pass.

Senator Parys then raised point of order stating that motion to indefinitely postpone was in order.

The chair took the point of order under advisement.

Mason's Manual (Sec. 468, page 319) states "3. Where motion to reconsider has been passed the question immediately recurs upon the question reconsidered."

Based on this rule

The chairman rules the point of order not well taken.

Germaneness: issue already decided (substantial similarity)
Senate Journal, March 9, 1972, pp. 2931–2932

On Tuesday, March 7, 1972, Senator McKenna raised point of order regarding the germaneness of senate substitute amendment to Senate Bill 914 the chair took the point of order under advisement.

The only difference in substitute amendment 2, offered by Senator Swan, and substitute amendment 1, rejected by the senate, appears on pages 9 and 10 of substitute amendment 2, lines 24 through 26 on page 9 and lines 1 through 11 on page 10.

The addition requires that:

"Referendum" means the referendum herein referred to, as applied to any city, village or town in which a housing project under this chapter is proposed to be located.

(a) No housing project may be commenced under this chapter until it has been submitted to a referendum.

(b) The question on the referendum shall be adopted by a majority of all members of the city, village or town board or council at regular meeting, after publication at least one week previous in the official paper.

(c) The notice of referendum shall include a general statement of the nature and location of the proposed housing project.

(d) Referendum elections under this subsection shall not be held more often than once year.

Since these are the only changes made from substitute 1, and contains all the provisions of substitute 1 which were already rejected by the senate, and since the additional provision above mentioned can be incorporated by simple amendment the chair rules the substitute not germane.

MARTIN J. SCHREIBER,
Lieutenant Governor.

1973

Point of order under advisement: business before house
Senate Journal, January 18, 1973, p. 164

Senator Johnson asked unanimous consent that Senate Resolution 7 be made a special order of business at 10:00 A.M., Tuesday, January 23.

Senator Risser raised the point of order that the resolution was not before the senate as the president had the resolution under advisement.

The chair [Lt.Gov. Schreiber] ruled the point of order well taken.

Rules: adoption or amendment of
Senate Journal, January 23, 1973, pp. 200–202

Senator Johnson moved that in as much as a week having elapsed that Senate Resolution 7, which had been under advisement by the chair, was before us and should be acted on.

The chair ruled the motion out of order.

Senator Johnson moved that the question be placed before the Senate.

Senator Risser raised the point of order that under rule 89, under the last adopted rules, this motion was out of order.

The chair took this point of order under advisement.

Senator Johnson moved that this question be placed before the Senate.

Senator Risser raised the point of order that the motion was out of order.

The chair took the point of order under advisement.

Senator Johnson raised the point of order that the Senate was operating with no rules as the rules had not been adopted.

The chair did not rule on this point of order.

Senator Risser raised the point of order that the Senate was operating by precedent on the last adopted Senate rules adopted in 1969.

The chair did not rule on this point of order.

Senator Knowles raised the point of order that according to Section 576 of Masons Manual: When the presiding officer attempts to thwart the purpose of his office the power resides in the house to pass him by and proceed to action otherwise....

The chair did not rule on this point of order.

By request of Senator Risser, with unanimous consent, the senate recessed until 11:55 A.M.

RECESS

11:55A.M.

The senate reconvened.

By request of Senator Johnson, with unanimous consent, he withdrew all his motions and points of order on Senate Resolution 7.

By request of Senator Risser, with unanimous consent, he withdrew all his points of order on Senate Resolution 7.

Point of order under advisement: timeliness of ruling
Senate Journal, January 24, 1973, pp. 209–211

State of Wisconsin
Office of the Lieutenant Governor

January 24, 1973

To the Honorable Senate:

Since the beginning of this legislative session allegations have been made by the leadership

of the Republican caucus of the Wisconsin State Senate that during the 1971 legislative session I abused my rights to rule on points of order to the consistent advantage of members of my own party.

During the 1971 legislative session, 125 points of order were raised by members of both parties. Of those 125 points of order ruled upon by me, 32 were appealed and out of those 32 appeals only nine times was the chair not upheld by the Senate. It is important to remember that during this time the majority party had a 20-13 margin which put a simple majority within easy reach, should it have been determined that these rulings were not based on an impartial decision. Being overruled nine out of 125 times means that the Senate body concurred in my rulings 92.8% of the time.

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

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

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

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

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

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

Yours very truly
MARTIN J. SCHREIBER
President of the Senate

Rules: adoption or amendment of
Senate Journal, January 24, 1973, pp. 214–216

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

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

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

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

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

This analysis of the proposed rule changes as supplied by the Legislative Reference Bureau and submitted by Senators Johnson and Knowles clearly sets forth the position of the Senators as what, in fact, the situation was when no new rules were adopted for the 1971

legislative session -- that situation being that the Senate would continue to operate under the "old" rules until new rules were adopted.

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

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

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

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

Germaneness: expanding scope of the proposal
Senate Journal, January 25, 1973, p. 224

On Wednesday, January 24, 1973, Senate Joint Resolution 18 was introduced. Said resolution relating to commending President Nixon for concluding the conflict in Vietnam. During the debate on the adoption of this resolution, senate amendment 1 to this Resolution was introduced. Senator Chilsen rose to a point of order stating that senate amendment 1 was not germane.

The chair took the point of order under advisement.

The question of germaneness of an amendment is at times at best a judgment call. It is the judgment of the chair that the amendment is not germane in that the amendment expands the basic intent of Senate Resolution 18.

Constitutional amendment (procedure on joint resolution proposing)
Tax exemptions: referral of proposal to joint survey committee on
Senate Journal, February 15, 1973, pp. 427–428

On Wednesday, February 14, Senator Parys raised the point of order that Senate Joint Resolution 1 must have a written report from the Joint Survey Committee on Tax Exemptions in order to be properly before the senate.

The chair took the point of order under advisement.

Wisconsin Statute 13.52 creates the Joint Survey Committee on Tax Exemptions and describes its powers and duties and in specific requires a report to be submitted in writing by the committee of the committee's opinion of the legality of the proposal, the fiscal effect upon the state and its subdivisions and its desirability as a matter of public policy.

Section 13.52 (5) sets forth the powers and duties of the committee. "It is the purpose of this committee to provide the legislature with a considered opinion of the legality of the proposal, of the fiscal effect upon the state and its sub-divisions and of the desirability as a matter of public policy of each legislative proposal which would *modify existing laws* or *create new laws* relating to the exemption of property or persons from any state or local taxes or special assessments."

The powers and duties section, 13.52 (5), and the report section, 13.52 (6), mention in specific: (5) "each legislative proposal which would *modify existing laws* or *create new laws*" and (6) "proposal which affects any *existing statute* or *creates any new statute*".

Senate Joint Resolution 1 does not "affect any *existing statute* or *create any new statute*", nor does it "*modify existing laws* or *create new laws*". Senate Joint Resolution 1 is a constitutional amendment which, if passed, would give the legislature the ability to create or modify existing laws. Because this resolution does not directly affect state statutes, it is the opinion of the chair that no report from the Joint Survey Committee on Tax Exemptions is needed in order for Senate Joint Resolution 1 to be properly before the Senate. The point of order is not well taken.

Fiscal estimate: required
Senate Journal, May 8, 1973, pp. 971–973

On Wednesday, May 2, 1973, Senator Risser raised the point of order that Senate Bill 227 required a fiscal note. The chair took this point of order under advisement.

Wisconsin Statutes section 13.10 (2) (a) states that:

"any bill making an appropriation and any bill increasing or decreasing existing appropriations or state or general local government fiscal liability or revenues shall, before

any note is taken thereon by either house of the legislature if the bill is not referred to a standing committee, or before any public hearing is held before any standing committee or, if no public hearing is held, before any vote is taken by the committee, incorporate as a note a reliable estimate of the anticipated change in appropriation authority or state or general local government fiscal liability or revenues under the bill, including to the extent possible a projection of such changes in future biennia..."

Senate Bill 227 requires that all males between the ages of 16 and 25, who are sentenced to prison terms for over one year, be placed first at the Wisconsin State Reformatory at Green Bay.

Presently, both Waupun State Prison and the Green Bay Reformatory are used as reception centers in the correctional system. Should this bill pass, there will be an obvious increase in the number of offenders sent to Green Bay for reception purposes, an obvious need for additional staff, and possibly a need for additional space. An obvious decrease will be necessitated in the programs and staffing at Waupun State Prison. Because of the very apparent change in program activities and staffing patterns in the correction system, which may affect the state appropriation, the question of the requirement of a fiscal note to this bill was taken under advisement by the chair.

In order to determine whether or not this bill falls under the categories specified under section 13.10, a request was made of the State Bureau of Planning and Budget to explain the possible fiscal effects of Senate Bill 227. The response for the information is attached hereto and made a part of this ruling.

State of Wisconsin
Department of Administration
May 7, 1973

The Honorable Martin Schreiber
Lieutenant Governor

State Capitol
Madison, Wisconsin

Dear Lieutenant Governor Schreiber:

This is in response to your inquiry about Senate Bill 227 and its possible fiscal effect. Our department has reviewed the bill and would estimate that it could very well increase costs in our correctional system in a number of ways:

Since the Green Bay Reformatory is presently at almost full capacity, any large influx of inmates for reception purposes could require additional staff at the Reformatory. Presently, the adult, male admissions average between 90 and 100 per month, which

would, depending on the length of stay at the Reformatory, cause an overcrowding of facilities and a possible need for new facilities to handle such a large influx of inmates.

Presently, both the Waupun State Prison and the Green Bay Reformatory are used as reception centers in the correctional system. By requiring that all males between the ages of 16 and 25, who are sentenced to prison terms for over one year, the amount of transferring between institutions would increase, having a concomitant effect on costs within the correctional program.

The Legislature is presently considering a new youthful offenders program for Wisconsin. As you know, a bill was passed in the 1971 session which was vetoed by the Governor, and since that time the Governor has prepared a new proposal creating a youthful offenders program, which is presently before both the State Assembly and the State Senate. Assuming the new youthful offenders program were in effect, this bill (SB 227) would be contradictory. By requiring all males between 16 and 25 sentenced to over one-year terms to the Green Bay Reformatory for reception purposes, an additional cost would be incurred by then transferring those males to a youthful offenders institution at some other location.

These observations would indicate that Senate Bill 227 could have a substantial fiscal impact on the correctional program in Wisconsin. A detailed fiscal note might be useful in dealing with these questions on a more detailed level. Our department would be willing to cooperate in the preparation of a fiscal note for Senate Bill 227, if requested by the Legislature.

Sincerely,
RICHARD I. PETERSON
Chief, Budget and Program Planning Section

Based on the report of the Bureau of Planning and Budget, it is the chair's position that Senate Bill 227 falls within the purview of Wisconsin Statutes section 13.10 and therefore, pursuant to law, requires a fiscal note.

Respectfully submitted,
MARTIN J. SCHREIBER,
Lieutenant Governor

Appointment by governor: senate advice and consent
Senate Journal, June 7, 1973, pp. 1202–1203

Senator Parys asked unanimous consent that the appointment of Roland B. Day be laid on the table. Senator Risser objected.

Senator Parys moved that the appointment of Roland B. Day be laid on the table.

Senator Risser raised the point of order that appointments must either be confirmed or rejected and not tabled.

The chair [Lt.Gov. Schreiber] ruled the point of order not well taken.

The ayes and noes were demanded and the vote was: [. . .]

[. . .] So the motion did not prevail.

Rules: adoption or amendment of
Senate Journal, October 2, 1973, pp. 1575, 1581

Senator Keppler raised the point of order that Senate Resolution 19, pursuant to senate rule 90, was not properly taken up earlier.

The chair took the point of order under advisement. [. . .]

[. . .] As it relates to the point of order raised on Senate Resolution 19, the chair ruled that one week did indeed mean seven days and not seven legislative calendar days. As these bills must go somewhere, it is necessary that the chief clerk put the bill on a calendar, but after one week (seven days) the bill would be considered privileged and could be taken up by a majority of the members present.

Therefore, pursuant to senate rule 90, the chair ruled the point of order well taken.

Retirement systems: referral of proposal to joint survey committee on
Retirement systems: report by joint survey committee on
Senate Journal, October 10, 1973, p. 1691

Ruling of the Chair on a point of order raised by Senator McKenna that Senate Bill 528 was not properly before the Senate since it did not comply with Section 13.50 of the statutes inasmuch as Section 13.50 (6a) provides in part that no bill or amendment thereto creating or modifying any system for, or making any provision for, the retirement of or payment of pensions for public officers or employees, shall be acted upon by the legislature until it has been referred to the Joint Survey Committee on Retirement Systems and such committee has submitted a written report on the proposed bill. The chair finds the point of order well taken.

The record of Senate Bill 528 indicates that the bill was referred to the Joint Committee on Retirement Systems and that a report was received with senate substitute amendment 1 recommended for adoption, and the bill reported without recommendation. Substitute amendment 2 and 3 were pending, but there was no indication that the amendments had been considered by the Joint Survey Committee on Retirement Systems. While the statute

is clear that the Joint Survey Committee on Retirement Systems must make a report on a bill before being acted upon by the legislature, the statutes are silent on the need for a report by the committee on an amendment. However, it is clear that the amendment must be submitted to the committee.

Section 13.50 (5) of the statutes states that all actions of the committee shall require the approval of a majority of all the members. The committee report shows that the vote by the committee was Ayes 3, Noes 3, and reported without recommendation. It is clear, therefore, that the committee report did not comply with Section 13.50 (5) of the statutes.

Therefore, the Chair concludes that (1) a committee report must be received on the original bill with approval of a majority of all of the members of the committee, and (2) that amendments must be referred to the committee but that there is no requirement for a report by the committee on amendments.

Constitutional amendment (procedure on joint resolution proposing)
Senate Journal, October 11, 1973, pp. 1720, 1725

Senate amendment 1 to Assembly Joint Resolution 1 offered by Senators Risser, LaFave, Parys, Whittow and Schuele.

Senator J. D. Swan moved rejection.

Senator J. D. Swan raised the point of order that senate amendments of substance were not in order at this stage of the bill.

The chair took the point of order under advisement. [. . .]

[. . .] As it relates to Assembly Joint Resolution 1 the chair ruled that an amendment would nullify the two years previous action, but that an amendment was certainly in order.

Finance: report of proposal by committee of one house
Senate Journal, October 17, 1973, pp. 1773–1774

Senator Hollander raised the point of order that under Senate Rule 20 a Senate Committee on Finance is created, and that that committee has full control over Senate bills and joint resolutions residing in the Joint Committee on Finance, and that that Senate Committee on Finance may, by a committee report, report Senate bills and joint resolutions to the Senate.

Ruling of the Chair

Senate Rule 20 entitled "Standing Committees of the Senate" lists under (1) (h) "on Finance, five members." (3) of Senate Rule 20 states "The members of the Senate Committee on Finance shall be the Senate members of the Joint Committee on Finance. The chairman of the Senate Committee on Finance shall be a chairman of the Joint Committee."

It is clear that the Senate intended to set up its own Finance Committee, and in accordance with section 13.09 of the statutes, the five senators comprising the Senate Finance Committee serve on the Joint Committee on Finance.

The Chair finds the point of order by Senator Hollander well taken. It is the opinion of the Chair that the Senate Committee on Finance has full jurisdiction over bills and joint resolutions under the control of the Senate which are referred to the Joint Committee on Finance. This would not only include Senate bills and joint resolutions which are under the control of the Senate, but it would also include Assembly Bills and joint resolutions which have already passed the Assembly and are under the control of the Senate.

The rule otherwise would allow the Assembly members of the Joint Committee on Finance to control the independent operation of the Senate and would violate the basic concept of bicameralism.

Finance: report of proposal by committee of one house
Senate Journal, January 29, 1974, pp. 2038–2039

To the Honorable Senate:

On October 25, 1973 Senator Risser raised the point of order that Senate Bill 107 could not be reported out by the Senate Committee on Finance as it was referred to the joint committee on Finance.

The chair took the point of order under advisement.

The history of this bill, as set forth in the Journal of the Senate of February 15, 1973, page 439, is as follows:

"Senate Bill 107 Relating to deposits in the veterans' trust fund and making an appropriation. Read a second time. By request of Senator Hollander, with unanimous consent, the bill was referred to *joint committee on Finance*." (emphasis supplied)

This printed record shows unequivocally that the bill was referred to the *joint committee on Finance*. A reading of the Senate Bulletin of the Proceedings of the Wisconsin Legislature, page 51, shows clearly that SB 107 never left the joint committee on Finance.

Therefore only the joint committee on Finance could have jurisdiction over this piece of legislation. The point of order therefore is well taken.

Respectfully submitted,
MARTIN J. SCHREIBER,
President of the Senate

Senator Johnson appealed the ruling of the chair and, with unanimous consent, laid the appeal over until January 30 under the tenth order of business.

Finance: report of proposal by committee of one house
Senate Journal, January 30, 1974, pp. 2061–2062

As it relates to the ruling of the chair on Senate Bill 107, the question was: Shall the ruling of the chair stand as the decision of the senate?

Senator Knowles moved that the question be laid on the table. The motion prevailed.

Senator Hollander raised the point of order that, if by unanimous consent, any bill could be withdrawn from the joint committee on Finance, then, by the same reasoning, any bill could be withdrawn from the joint committee on Finance and referred to the senate committee on Finance.

The chair took the point of order under advisement.

Reconsideration motion
Senate Journal, February 20, 1974, pp. 2224–2225

On Tuesday, February 12, 1974, Senate Joint Resolution 44, proposing an amendment to the Constitution failed adoption, the vote being Ayes 16, Noes 14. This resolution required "the affirmative vote of a majority of the members elected."

On Wednesday, February 13, 1974 Senator Roseleip moved reconsideration, having been one of the 16 Aye votes. Senator Risser raised the point of order that Senator Roseleip did not vote with the prevailing side. The Chair took the point of order under advisement.

Senator Bablitch also entered a motion for reconsideration having been one of the 14 negative votes, -- in the event Senator Risser's point of order is ruled well taken.

According to the rules, the purpose of reconsideration is to allow a member who may have changed his mind on the prevailing side to have another vote taken on the subject.

In this case there were enough negative votes to prohibit Senate Joint Resolution 44 from receiving the required seventeen (17) affirmative votes. Therefore the 14 negative votes prevailed and the motion for reconsideration must come from one of these votes. Therefore, the point of order by Senator Risser is well taken, and the reconsideration motion by Senator Bablitch is the question on Senate Joint Resolution 44.

Finance: report of proposal by committee of one house
Senate Journal, March 6, 1974, p. 2377

Senator Schuele called the chair's attention to the fact that all members being present the

question was: Shall the ruling of the chair stand as the decision of the senate, as it relates to Senate Bill 107?

The ayes and noes were demanded and the vote was: [. . .]

[. . .] So the ruling of the chair was overruled.

Adjourn or recess, motion to
Senate Journal, March 20, 1974, p. 2507

Senator Risser moved a call of the senate.

Senator Johnson moved that the senate adjourn.

Senator Risser moved to amend the adjournment motion.

The chair [Lt.Gov. Schreiber] ruled that the motion to adjourn was not amendable.

Senator Risser appealed the ruling of the chair.

Senator Knowles raised the point of order that pursuant to senate rule 68 the question was nondebatable.

The chair ruled the point of order well taken.

Conference committee: procedures relating to
Senate Journal, May 22, 1974, special session, pp. 193–194

Senator Risser raised the point of order that Senator LaFave was shown as being absent on the vote of passage on Senate Bill 5, Special Session and therefore, should not be appointed to the Committee of Conference on the bill.

The chair ruled the point of order well taken as page 133 of the special session journal showed the senator absent.

Senator Johnson appealed the ruling of the chair.

The question was: Shall the ruling of the chair stand as the decision of the senate?

The ayes and noes were required and the vote was: [. . .]

[. . .] So the ruling of the chair was not sustained.

1975

Motions: proper time for making
Tabling motion
Senate Journal, February 4, 1975, pp. 216–217

On Wednesday, January 22, 1975, during the 10th order of business the Senator from the 33rd made a motion that Senate Resolution 3 be taken from the table.

The chair ruled that motion out of order ruling that said motion should be appropriately made under the eighth order of business.

Just prior to adjournment on said day the Senator from the 10th rose to a point of order on the chair's ruling citing Senate Rule 65.

(1) A motion to lay on the table shall only have the effect of disposing of the matter temporarily and it may be taken from the table *at any time* by order of the Senate.

The question is simply, can a bill or resolution be taken from the table *at any time*?

Senate Rule 65 when read in its entirety furnished the guidance needed for the decision on this appeal.

(2) A motion to lay a bill or resolution on the table shall, if approved, have the effect of returning the matter to the committee on senate organization.

(3) A *motion to remove a bill or resolution* from the table shall, if approved, have the effect of withdrawing the matter from the committee on senate organization and placing it on the calendar.

Under the Senate Rule 65 (2) a motion to table a bill or resolution is not really a motion to table in the traditional sense but actually is a motion with the effect of "*returning the matter to the committee on senate organization*." [See also Senate Rule 63 (1)(f)].

Under Senate Rule 65 (3) a motion to remove a bill or resolution from the table is not really a motion to remove from the table in the traditional sense, but actually a motion with the effect of "withdrawing the matter from the committee on senate organization and placing it on the calendar."

The "and it may be taken from the table at any time" language of Senate Rule 65 (1), because of the explicit language in (2) and (3) becomes inoperative when a tabling motion involves "placing" or "taking" a *bill* or *resolution* from the table.

A motion to take a bill or resolution from committee or remove a bill or resolution from the table cannot be made at any time but must be made under the appropriate order of business pursuant to the rules.

The point of order is not well taken.

Respectfully submitted
MARTIN J. SCHREIBER
Lieutenant Governor

Journal: contents of
Senate Journal, February 18, 1975, pp. 284, 291

Senator Knowles raised the point of order that the transmittal of the lobbylist from the office of the Secretary of State contained material which should not properly be spread upon the journal.

The chair took the point of order under advisement. [. . .]

[. . .] As it relates to the point of order raised by Senator Knowles regarding the proper form for the lobbylist, the chair ruled that the senate journal was not the proper place for editorializing. Therefore, the clerk was directed to spread the list upon the journal without the cover letter. The point of order was well taken.

Rules: adoption or amendment of
Senate Journal, April 15, 1975, p. 500

On April 8, 1975, Senator Robert Knowles raised the point of order that Senate Resolution 9 (relating to a change in the Senate Rules) was privileged and pursuant to the rules has laid over the required one week, therefore, the resolution should be before the Senate body.

The chair took the point of order under advisement.

The Senator from the 10th apparently is viewing Senate Rule 69 entitled "Privileged Question" as the basis for his point of order. This rule states that "any motion or resolution relating to the organization or procedure of the senate ... shall be privileged and *need not* lie over for consideration."

Even to casual reviewer of the Senate Rules it is clear that Senate Rule 69 under the heading of "General Procedure - order in debate" does not stand alone as an entity unto itself when involving the matter of rules. The Senate body in its wisdom adopted a specific Chapter (Chapter 10) entitled *Rules* to deal with the matter of creating, amending or repealing rules, suspending rules and publishing of senate rule.

Senate Rule 90 of Chapter 10 states that: ... "After the rules have been established at the commencement of the legislative biennium, any resolution to change the rules shall lay over one week."

Neither under Senate Rule 90 or 69 is there any requirement that a resolution pertaining to "Rules" or "Privileged Question" be acted upon within a specific time frame.

Senate Rule 69 states the motion or resolution "need not lie over" but does not require action by any specified time.

Senate Rule 90 states the rules "shall lie over one week" but does not require action by any specified time.

Once the required lay over period has passed, the Senate body may, pursuant to the rules, take the necessary action to bring the matter before the Senate body should the Senate so desire.

The point of order that the rules must automatically come before the Senate body because the required lay over time has elapsed is not well taken pursuant to Senate Rule 90.

Respectfully submitted,
MARTIN J. SCHREIBER
Lieutenant Governor

Constitutional amendment (procedure on joint resolution proposing)
Tax exemptions: referral of proposal to joint survey committee on
Senate Journal, June 24, 1975, pp. 954–955

On Wednesday, June 18, 1975, Senator Berger raised the point of order that Senate Joint Resolution 36 must be referred to the Joint Survey Committee on Tax Exemptions pursuant to 13.52 of the state statutes.

The chair took the point of order under advisement.

A similar point of order was raised in 1973 on whether or not a proposed constitutional amendment relating to taxation of agricultural land should be required to be referred to the Joint Survey Committee on Tax Exemptions. At that time, the presiding officer ruled, on page 427 of the Journal of 1973, that the resolution need not be so referred. It is the opinion of this chair that this earlier ruling was based on sound reasoning and this chair reiterates the reasoning of the then presiding officer as it is applicable to the present question before this house.

Wisconsin Statute 13.52 creates the Joint Survey Committee on Tax Exemptions and describes its power and duties and in specific requires a report to be submitted in writing by the committee of the committee's opinion of the legality of the proposal, the fiscal effect upon the state and its subdivisions and its desirability as a matter of public policy.

Section 13.52 (5) sets forth the powers and duties of the committee. "It is the purpose of

this committee to provide the legislature with a considered opinion of the legality of the proposal, of the fiscal effect upon the state and its sub-divisions and of the desirability as a matter of public policy of each legislative proposal which would *modify existing laws* or *create new laws* relating to the exemption of property or persons from any state or local taxes or special assessments."

The powers and duties section, 13.52 (5), and the report section, 13.52 (6), mention in specific: (5) "each legislative proposal which would *modify existing laws* or *create new laws*" and (6) "proposal which affects any *existing statute* or *creates any new statute*".

Senate Joint Resolution 36 does not "affect any *existing statute* or *create any new statute*", nor does it "*modify existing laws* or *create new laws*". Senate Joint Resolution 36 is a constitutional amendment which, if passed, would give the legislature the ability to create or modify existing laws. Because this resolution does not directly affect state statutes, it is the opinion of the chair that no report from the Joint Survey Committee on Tax Exemptions is needed in order for Senate Joint Resolution 36 to be properly before the senate.

The point of order is not well taken.

FRED A. RISSER
President pro tempore

Concurrence in amendment by other house: permitted procedures
Senate Journal, September 26, 1975, pp. 1449, 1457

Senate amendments 1 and 2 to assembly amendment 2 to Senate Bill 420 offered by Senator Bablitch.

Senator Hollander raised the point of order that the assembly amendments could not be amended.

The chair took the point of order under advisement. [. . .]

[. . .] As it relates to the point of order raised on Senate Bill 420, the chair ruled that assembly amendments could be amended in this house, and therefore, the point of order was not well taken.

Timeliness of point of order
Senate Journal, February 19, 1976, p. 1779

Senator Parys raised the point of order that senate amendment 2 was not germane.

The chair ruled the point of order untimely as the amendment was adopted in September and therefore, not well taken.

Concurrence in amendment by other house: permitted procedures
Senate Journal, March 25, 1976, pp. 2173–2174

Senator Knowles raised the point of order that pursuant to senate rule 18 (2) he was entitled to a 24 hour written notice of measures to be considered. To do otherwise would require a suspension of the rules. [. . .]

[. . .] As it relates to the point of order raised by Senator Knowles, the chair [Lt.Gov. Schreiber] ruled the point of order not well taken. Senate bills with assembly amendments which are received under the seventh order are not referred to any committee pursuant to senate rule 41 (2), and therefore, require only a majority vote to be considered for action.

1977

Constitutional amendment (procedure on joint resolution proposing)
Tax exemptions: referral of proposal to joint survey committee on
Senate Journal, January 20, 1977, pp. 73–74

On Thursday, January 13, 1977, Senator Theno raised the point of order that Senate Joint Resolutions 7 and 8 were constitutional amendments and therefore were not *required* to be referred to the Joint Survey Committee on Tax Exemptions pursuant to sec. 13.52 Wis. Stats.

The chair took the point of order under advisement.

Section 13.52 (5) sets forth the powers and duties of the committee. "It is the purpose of this committee to provide the legislature with a considered opinion of the legality of the proposal, of the fiscal effect upon the state and its subdivisions and of the desirability as a matter of public policy of each legislative proposal which would modify existing laws or create new laws relating to the exemption of property or persons from any state or local taxes or special assessments."

The powers and duties section, 13.52 (5), and the report section, 13.52 (6), mention in specific: (5) "each legislative proposal which would *modify existing laws* or *create new laws*" and (6) "proposal which affects any *existing statute* or *creates any new statute*".

It is the chair's opinion that Senate Joint Resolutions 7 and 8, which are constitutional amendments, do not "affect any existing statute or create any new statute", nor do they

"*modify existing laws* or *create new laws*". Therefore, the joint resolutions would not be required by law to be referred to the Joint Survey Committee on Tax Exemptions.

A similar point of order was raised in June of 1975, journal page 954 and in February of 1973, journal page 427. It is the opinion of the chair that these earlier rulings were based on sound reasoning and the chair upholds its earlier position.

Therefore, the point of order is well taken.

FRED A. RISSER
President pro tempore

Constitutional amendment (procedure on joint resolution proposing)
Tax exemptions: referral of proposal to joint survey committee on
Senate Journal, February 1, 1977, p. 124

As it relates to the point of order raised by Senator Sensenbrenner that Senate Joint Resolutions 7 and 8 are required by senate rule 20 to be referred to a senate standing committee, the chair rules the point of order is not well taken.

Senate rule 20 does not require that measures be referred to standing committees as opposed to statutory committees. There is nothing in any of the senate rules that does not allow referral to a statutory committee. The joint resolutions are properly in the Joint Survey Committee on Tax Exemptions.

FRED A. RISSER
President pro tempore

Germaneness: nature or purpose of proposal
Senate Journal, March 29, 1977, pp. 289–290

On Thursday, February 17, 1977, the last day of Floor Period I, Senator Bablitch raised the point of order that senate amendment 1 to Senate Resolution 8 (relating to combining the standing committees on Natural Resources and on Tourism) was not germane. The chair took the point of order under advisement.

Senate amendment 1 would repeal the Committee on Senate Organization; Senate Resolution 8 would combine the standing committees on Natural Resources and Tourism.

Senate Rule 50 (1) states that the Senate shall not consider any amendment which, "...is intended to accomplish a different purpose, would require a title essentially different or would totally alter the nature of the original proposal."

The title of Senate Resolution 8 clearly limits the purpose of the resolution to "...combining

the standing committees on Natural Resources and on Tourism." There is no hint, in either the title or body, that the author intended the resolution to have a wider application, or affect any other Senate Committee.

The purpose of senate amendment 1 is also clear ... to repeal a committee which is not mentioned in the title or body of the original proposal (viz. Senate Organization).

Since the Committee on Senate Organization is never mentioned directly or indirectly in the original proposal, any attempt to abolish that committee via amendment is in direct violation of Senate Rule 50.

Such an attempt "...totally alters the nature of the original proposal" and is therefore not germane, in the opinion of the chair.

Sincerely,
FRED A. RISSER
President pro tem

Banking bills: 2/3 vote required (obsolete April 1981)
Senate Journal, April 14, 1977, pp. 398–400

On Thursday, April 7, 1977, Senator Sensenbrenner raised the point of order that Senate Bill 55 was not "banking legislation" and therefore would not require 22 affirmative votes for passage. The chair took the point of order under advisement.

Senate Bill 55 adds a new paragraph to s. 138.05, commonly known as the state's usury law. Specifically, Senate Bill 55 exempts all loans of $100,000 or more from the maximum interest rate, prepayment and loan disclosure requirements found in s. 138.05.

It is important to emphasize that the statutory change proposed in Senate 55 relates exclusively to s. 138.05 . . . the usury law. Senate Bill 55 makes no reference to ss. 220-224 which relates specifically to banking.

Since early statehood Wisconsin courts, the Attorney General and the Legislature have drawn a clear distinction between usury laws and banking legislation. The enactment or amendment of general usury laws has never required a two-thirds affirmative vote. Rock River Bank v. Sherwood, 10 Wis. 174, (1860); Brower v. Haight, 18 Wis. 102, (1864).

A concise summary of judicial case law on the subject of what does and what does not constitute banking legislation is found in the opinion of the Attorney General in 20 O.A.G. 1127 (1931):

"The gist of the (Supreme Court) decisions is that the constitutional requirement applies

to substantive changes in the laws governing the creation of banks and the regulation and supervision of the banking business. General laws applying to banks as well as others which do not materially affect the creation of banks and regulation and supervision of the banking business do not require a two-thirds vote."

A point of order very similar to the one presently in question can be found in the Senate Journal of July 6, 1976, page 1599. There the president of the Senate ruled that Senate Bill 534, which established a maximum interest rate for loans under $5,000, did not require a two-thirds vote because:

1. The bill affected that section of state statute which contained the state's usury law, not those sections which related specifically to banks.

2. The bill is a general restriction which applies to banks only as part of a larger group and such proposals are not banking legislation.

3. Sec. 4, art. XI must be strictly construed in the interests of effective legislation.

A detailed explanation of what constitutes "banking legislation" and a detailed history of precedent on the subject can be found in the Assembly Journal of February 22, 1972, page 3743. The chair ruled that Assembly Bill 1057, a comprehensive consumer credit act, did not require a two-thirds vote because it constituted "'a general scheme' of consumer credit regulations which will apply to banks merely as one class of creditors coming thereunder. In no sense is it specifically designed for, or aimed at, banks in particular..." The chair also ruled that, "the extension of consumer credit is not exclusively a banking function and therefore the bill does not constitute banking legislation."

The most recent ruling on the subject is found in the Senate Journal of September 18, 1975 on page 1332. Here the president pro tem of the Senate ruled that Senate Bill 527, which made several changes in s. 138.09 relative to installment loans under the precomputed loan law, did not require a two-thirds vote. The chair based this ruling on 27 O.A.G. 839 (1938) which said that a law can *apply* to banks without relating to banks and banking (emphasis added) within the meaning prescribed by sec. 4, art. XI of the constitution.

Precedent relative to the pending point of order is clear and unambiguous. The amendment or enactment of usury law is not "banking legislation" in the context or sec. 4, art. XI and does not require a two-thirds affirmative vote. Therefore the chair holds the point of order raised by Senator Sensenbrenner well taken.

Sincerely,
FRED A. RISSER
President pro tempore

Tax exemptions: referral of proposal to joint survey committee on
Senate Journal, June 29, 1977, pp. 944–945

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."

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

Germaneness: nature or purpose of proposal
Senate Journal, September 27, 1977, pp. 1245–1246

On Tuesday, September 20, 1977, Senator Peloquin raised the point of order that senate substitute amendment 1 to Senate Bill 4 was not germane. The chair took the point of order under advisement.

Senate rule 50 (1) specifically states that "...any substitute or amendment which ... is intended to accomplish a different purpose ... or would totally alter the nature of the original proposal..." is nongermane.

The main purpose of Senate Bill 4 is to allow "cross-couponing" between manufacturers, that is, it would allow coupons issued with merchandise packed by one manufacturer to be redeemed by another manufacturer.

The purpose of senate substitute amendment 1, on the other hand, is to allow coupons, trading stamps or any similar device to be issued by *anyone*, with the wholesale of retail sale of any goods or merchandise, and redeemable by *anyone* including redemption centers for cash or merchandise.

These options were neither intended nor contemplated by the authors of the original bill. Because the provision of senate substitute amendment 1 would accomplish a totally different purpose and would totally alter the nature of the original proposal, it is the opinion of the chair that senate substitute amendment 1 to Senate Bill 4 is not germane and the point of order raised by Senator Peloquin is well taken.

FRED A. RISSER
President pro tempore

Third reading of proposal
Senate Journal, September 28, 1977, pp. 1294–1295

Earlier today the Senator from the 4th, Senator Sensenbrenner, raised the point of order that Assembly Bill 664 was not properly before the Senate. He argued that placing Assembly Bill 664 under the 9th order on the calendar of September 28 for final reading

was in violation of senate rule 18 (2). He claimed that the senate organization committee was required by senate rule 18 (2) to provide at least 18 hours notice of matters to be taken up by the Senate and that such notice had not been provided in this case.

Senate rule 18 (1) makes it clear that the scheduling authority of the senate organization committee extends to many matters. Senate organization's scheduling authority does not extend, however, to bills, resolutions or other business which senate rules or precedent clearly provide shall be handled in another manner.

Although current senate rules do not address the present question directly, old senate rules are explicit on the subject and at least one recent ruling of the chair reaffirms the well-known rule that legislation ordered to a third reading but not considered for final action on that day will be placed on the next calendar.

A good example of the old senate rule can be found in the 1957 senate manual. Senate rule 38 reads in part:

"Each bill or resolution ordered engrossed and read a third time shall be delivered...to the chief clerk, who shall...place it upon the next calendar 'ready for third reading.'"

This language was dropped from the rules after 1965.

The most recent and direct ruling on the subject can be found in the Senate Journal of April 22, 1975 on page 547 where the chair correctly ruled that in order to be consistent with the language and intent of the rules, a measure ordered to a third reading is automatically placed on the next calendar to be printed.

There are other instances where the senate rules dictate what must happen to legislation. Senate rule 18 (4), for example, requires that unfinished calendars be carried over and taken up between the 9th and 10th order on the next calendar. Senate rule 17 (3) provides that special orders once established shall continue to be special orders, and when laid over under the rules shall be special orders on their proper calendar. These matters are clearly not within the scheduling authority of Senate Organization.

Since Senate rules have always required bills ready for third reading to be placed on the next calendar, Senate Rules do not require special notice of such placement. Therefore no Senate Rules have been violated and the point of order raised by the Senator from the 4th is not well taken.

FRED A. RISSER
President pro tempore

Retirement systems: report by joint survey committee on

Senate Journal, November 9, 1977, special session, pp. 1401–1403

On Monday, November 7, 1977, Senator Sensenbrenner raised the point of order that s. 13.50 (6) and senate rule 54 require the joint survey committee on retirement systems to submit reports on senate substitute amendments 1 and 2 to Senate Bill 1, Special Session and that until such reports are received further action on the substitutes is improper. The chair took the point of order under advisement.

Section 13.50 (6) (a) directs that:

No bill or amendment thereto creating or modifying any system for, or making any provision for, the retirement of or payment of pensions to public officers or employes, shall be acted upon by the legislature until it has been referred to the joint survey committee on retirement systems and such committee has submitted a written report on the proposed bill.

Senate Rule 54, *Amendments to be reported*, directs that:

Whenever any bill to which am [an] amendment is pending shall be referred to a committee such amendment shall be reported back to the senate.

The question is whether the statutory language requires each bill and amendment to be referred to the retirement committee and then requires a single written report on the proposed bill; or, whether the statute requires each bill and amendment to be referred to the retirement committee and then requires a written report on the bill *and each amendment*.

A ruling of the chair which has application in this case was made on October 10, 1973 (1973 Senate Journal page 1691) in response to a point of order by Senator McKenna that a retirement bill was improperly before the senate because: 1) a majority of the committee members had not approved the entire report as required in 13.50 (5), and 2) the committee had submitted its report recommending adoption of senate substitute amendment 1 while the bill itself was reported without recommendation in violation of 13.50 (6).

The chair [Lt.Gov. Schreiber] ruled in part that, "While the statute is clear that the joint survey committee on retirement systems must make a report on a bill before being acted upon by the legislature, the statutes are silent on the need for a report by the committee on an amendment. However, it is clear that the amendment must be submitted to the committee."

The chair went on to conclude that: (1) a committee report must be received on the original bill with approval of a majority of all the members of the committee, and (2) that amendments must be referred to the committee but that *there is no requirement for a report by the committee on amendments*."

A glance at language elsewhere in the rules and statutes bear out these conclusions. Joint rule 42 (b), for example, mentions a single report for each retirement bill.

"Bills affecting a public retirement fund shall be referred to the joint survey committee on retirement systems under section 13.50 of the statutes...For any such bill the fiscal estimate shall be prepared by the respective joint survey committee at the time the committee prepares its analysis of the bill, and shall be submitted to the legislature as a part of the committee's bill analysis which is then printed as an appendix to the bill."

It is a well-known joint rule, 41 (2), that fiscal estimates are required on original bills only and not on substitute amendments or amendments.

Tax exemption bills, which are handled by a statutory committee similar in structure and operation to the joint retirement committee, are required to have only a single report before being considered by the legislature.

These references lead to but one conclusion ... that *bills and amendments* must be referred to the retirement committee, but that a written report is required *only on the proposed bill*.

The senate rule 54 requirement that amendments as well as bills be "reported" back to the senate clearly refers to the "report" required under senate rule 27, not the statutory report required by s. 13.50 (6).

Reports under senate rule 27 are typically brief documents which simply record the action of the committee and the committee's recommendations. Statutory reports from the retirement committee, on the other hand, are very thorough documents which take hours to research and prepare. They are submitted for the purpose of informing the legislature about the effect, cost and desirability of retirement legislation, but they make no recommendation regarding passage or postponement of the legislation.

The purpose of senate rule 54 is to assure that every amendment in a senate committee will be returned to the floor for action, not to require a lengthy and detailed report for each amendment and substitute. To read rule 54 as requiring such a report for each amendment and substitute amendment would be a perversion of the rules and present unlimited opportunity for delay.

For these reasons, the point of order raised by Senator Sensenbrenner is not well taken.

FRED A. RISSER
Acting President

Germaneness: limiting scope of proposal
Senate Journal, January 31, 1978, p. 1598

Earlier today Senator Murphy raised the point of order that senate amendment 4 to senate Bill 554 was not germane. The chair took the point of order under advisement.

Senate Bill 554 relates to "using dogs to hunt bear, requiring bear hunters to wear a back tag and providing a penalty." The bill would, among other things, allow licensed bear hunters to hunt bear with a dog (or dogs), but only after obtaining a permit from the Department of Natural Resources. Only one permit may be issued per hunter which covers the use of no more than 6 dogs, as the bill was originally drafted. However no hunter or group of hunters may use more than 6 dogs while hunting bear.

Senate amendment 4, introduced by Senator Theno, seeks to entirely prohibit hunters from using dogs to hunt bear.

In this case the chair went to Mason's Manual, Section 402, paragraphs 3 and 6, which the chair believes has some application in this instance.

Paragraph 3 says: "To be germane, the amendment is required only to relate to the same subject. It may entirely change the effect of the motion or measure and still be germane to the subject."

Paragraph 6 says: "No independent new question can be introduced under cover of an amendment. But an amendment may be in conflict with the spirit of the original motion, and still be germane and, therefore, in order.

Senate amendment 4 does not relate to a different subject since it deals with dogs and bear hunting, as does the bill. Whether senate amendment 4 is intended to accomplish a different purpose or would require a title essentially different is questionable.

The question of germaneness has been described by past chairs as "at best a judgment call" ('73, 224). In this case it is the judgment of the chair that senate amendment 4 is germane.

FRED A. RISSER
President Pro Tempore

Tax exemptions: referral of proposal to joint survey committee on
Senate Journal, February 14, 1978, pp. 1684–1686

On Tuesday, February 7, 1978, Senator Sensenbrenner raised the point of order that Assembly Bill 754 must be referred to the Joint Survey Committee on Tax Exemptions pursuant to sec. 13.52 of the Wisconsin statutes.

Senator Sensenbrenner contended that such reference was required by virtue of the adoption of senate amendment 1, which would exempt certain property from the general property tax. The chair took the point of order under advisement.

This particular issue has been raised from time to time in both the Senate and Assembly, but a definitive ruling on the subject has never surfaced. The chair would like to take this opportunity to offer such a ruling for the record.

Assembly Bill 754 as messaged from the Assembly makes various changes in Chapter 33 of the Wisconsin statutes (Public Inland Lake Protection and Rehabilitation). None of the changes relate to a tax exemption.

However, senate amendment 1 to Assembly Bill 754 would exempt property owned by any public inland lake protection and rehabilitation district from the general property tax.

Section 13.52 (6) of the Wisconsin statutes requires that "upon the introduction in either house of the legislature of any proposal which affects any existing statute or creates any new statute relating to the exemption of any property or person from any state or local taxes or special assessments, such proposal shall at once be referred to the Joint Survey Committee on Tax Exemptions by the presiding officer..."

Section 13.52 (5) requires that the Joint Survey Committee on Tax Exemptions report on the desirability of "each legislative proposal which would modify existing laws or create new laws relating to the exemption of property or persons from any state or local taxes or special assessments."

The question is whether this statutory language requires a bill to be referred (or rereferred) to the tax exemption committee each time an amendment (or substitute amendment) proposing to create (or change) a tax exemption is introduced (or adopted).

The statutory language is particulary unenlightening in this case because there is no indication whether the word "proposal" is meant to include amendments and substitute amendments as well as original bills.

Existing legislative records on s. 13.52, which was originally passed and signed into law as Chapter 153, Laws of 1963, yield no clues.

Therefore, the chair must look for other indications of legislative intent.

The phrase "upon the introduction in either house" in s. 13.52 is significant, for original measures are "introduced", while amendments and substitute amendments are "offered".

The phrase "shall at once be referred to the Joint Survey Committee on Tax Exemptions by the presiding officer" is also helpful because only original measures, not amendments, are referred to committee by the presiding officer.

Halfway through s 13.52 (6) the word "proposal" is dropped and the word "bill" substituted, thus lending further credence to the supposition that the section applies only to original bills and not to amendments or substitute amendments.

Neither Senate nor joint rules contain a definition of "proposal" but the Assembly has seen fit to define the word in Assembly rule 97 (61). The Assembly definition includes motions, resolutions, joint resolutions and bills but does not include amendments or substitute amendments.

Even though this issue has been before the legislature previously, the chair was able to find only one Senate ruling which clearly states that only original bills are to be referred to the tax exemptions committee.

In 1971 Senator Hollander raised the point of order that Senate amendment 8 (to Assembly substitute amendment 1 to Senate Bill 805) must first be referred to the Joint Survey Committee on Tax Exemptions "because of the type of legislation it proposes".

The chair ruled that "senate amendment 8...need not be referred to committee, unless it was introduced as a bill". (1971 Senate Journal, page 2052).

If the chair were to reverse this precedent and interpret the statutes as requiring tax exemption *amendments* to be referred to committee then delay of legislation, not more thorough study of it, would be the result as often as not.

If a majority of Senators feel that senate amendment 1 to Assembly Bill 754, or any other amendment, does indeed merit study by the tax exemptions committee, a simple majority vote can accomplish the task.

For all these reasons the chair must rule that only *original bills* are required to be referred to the tax exemption committee and that *amendments or substitute amendments* are not required or intended to be so referred.

By request of Senator Bablitch, with unanimous consent, Assembly Bill 754 was placed at the foot of today's calendar.

FRED A. RISSER
President pro tempore

Motions: proper time for making
Withdrawal motion: from committee
Senate Journal, February 14, 1978, p. 1708

Earlier today Senator Parys asked unanimous consent that Senate Bill 568 be referred to the joint committee on Finance and the bill was so referred.

Before the next bill was called Senator Dorman moved that the bill be withdrawn from the joint committee on Finance which would have the effect of referring the bill to the committee on Senate Organization.

At that time Senator Sensenbrenner raised the point of order that we were not on the eighth order of business and that a motion to withdraw was therefore not proper. The chair took the point of order under advisement.

The chair has checked the rules and finds no written rule that restricts motions to the eighth order of business, although that has been the practice and precedent of this session.

The chair recalls that in past sessions, operating under similar rules, motions to withdraw from committee have been made at other times than the eighth order.

It is the chair's opinion however, that unwritten precedent or informal agreements on Senate procedure should control when there is no written rule directly on point.

In this case the chair finds no written rule either allowing or forbidding the Senator to make a motion to withdraw from committee at the time he made it. But there is strong precedent this session, enunciated as recently as last week by the majority leader, that motions to withdraw bills from committee will be restricted to the eighth order of business.

Therefore, the chair rules that based on precedent established this session the point of order raised by the Senator from the 4th is well taken and Senate Bill 568 remains in the joint committee on Finance.

FRED A. RISSER
President pro tempore

Motions: priority of considering
Senate Journal, March 2, 1978, p. 1860

On Thursday, February 23, 1978, Senator Braun moved reconsideration of the vote by which senate amendment 3 to Senate Bill 324 was adopted.

At the time the reconsideration motion was made, the question before the Senate was: Shall Senate Bill 324 be referred to the committee on Commerce?

Senator Bablitch raised the point of order that the motion to refer to committee should take precedence over the motion to reconsider the amendment.

Senate Rule 67 (6) states that "reconsideration of amendments...shall have the same priority as to order of action as to amend under rule 63."

Since a motion to refer is listed before a motion to amend under Senate Rule 63, the point of order raised by Senator Bablitch is well taken and the question before the Senate is: Shall Senate Bill 324 be referred to the committee on Commerce?

FRED A. RISSER
President pro tempore

Reconsideration motion
Tabling motion
Senate Journal, March 7, 1978, pp. 1893–1895

On Tuesday, February 21, 1978, the Senate failed to concur in Assembly Bill 814. At the

conclusion of the day's session Senator Flynn moved to reconsider that vote. Senator Bablitch moved to table the reconsideration motion and raised a point of order relative to Senate rules and procedure on motions for reconsideration.

Senate Rule 67 (4) states: "A motion to reconsider shall be put immediately unless it is laid over to a future time by majority vote."

Senate Rule 67 (1) states: "The motion for reconsideration may be laid on the table without debate."

These rules set forth the three basic procedural alternatives available once a motion for reconsideration has been made. Each can be decided by majority vote any time after pending business or motions of higher precedence are disposed of.

1. Put the question immediately and vote the motion up or down pursuant to Senate Rule 67 (4).

2. Move to lay the reconsideration motion over to a future time (later on that day's calendar or to a future calendar) pursuant to Senate Rule 67 (4).

3. Move to lay the reconsideration motion on the table pursuant to Senate Rule 67 (1). This motion, if successful, would have the effect of disposing of the reconsideration motion temporarily and the motion could be taken from the table at any time by majority vote.

Mason's Manual, sec. 472 (2) states that "when a motion to reconsider is laid on the table or postponed definitely, the question to be reconsidered and all adhering questions go with it."

Senate Rule 41 (2) clearly prohibits referring a motion to reconsider to committee.

Despite the clarity of our rules, there is sometimes uncertainty about proper reconsideration procedure. There are also occasional questions about various motions which may be offered during, or following, the reconsideration process.

The chair would like to take this opportunity to offer a clarification of reconsideration procedure.

First, it is always helpful to remember that any kind of procedural strategy is allowed if the rules are suspended. Sometimes action which is obviously improper under the rules is questioned, but turns out to have been taken only as the result of a successful unanimous consent request.

A motion to reconsider is unusual in that the *making* of the motion has a higher rank than its consideration.

Making a motion to reconsider is accorded a high priority by Senate Rule 67 (3) which states that "the motion for reconsideration...shall be received under any order of business,"

and Mason's Manual sec. 92 (3) which lists the making of a reconsideration motion as one of the few circumstances under which a member may interrupt a speaker.

Consideration of a motion to reconsider however, must wait until pending business or motions of higher precedence are disposed of.

Mason's Manual sec. 469 (3) states that "when reconsideration is moved while another subject is before the house, it cannot interrupt the pending business..." Mason's sec. 465, suggests the following procedure when a motion to reconsider is made while other business is before the house: "...the presiding officer repeats the motion (to reconsider) and it is recorded in the minutes, and the house proceeds to the business which was interrupted by the motion." Mason's sec. 469 (3) states that "as soon as (the pending) business has been disposed of, the reconsideration may be called up..."

Consideration of a motion to reconsider must also wait until motions of higher precedence are disposed of. Unfortunately our Senate rules do not specify which motions have a higher precedence.

Sec. 469 (1) of Mason's Manual however, states that "consideration (of motions to reconsider) has only the rank of the motion to be reconsidered." Our rules do specify that "reconsideration of *amendments* ...shall have the same priority as to order of action as to amend under rule 63." (Senate Rule 67[6]).

When consideration of the motion to reconsider does come before the body, either "immediately", at the future time to which it is laid over, or when it is taken off the table, Senate Rule 67 (1) states that "the motion for reconsideration shall be subject to all rules governing debate as apply to the question which it is moved to reconsider."

If a motion to reconsider is rejected, the original decision of the body is sustained. Senate Rule 67 (8) states that "such motion having been put and lost shall not be renewed." Mason's Manual sec. 457 (2) states that "to prevent abuse of the motion to reconsider, the same question cannot be reconsidered a second time."

If the motion to reconsider is adopted however, the vote on the question which has been reconsidered "is canceled as completely as though it had never been taken," (Mason's sec. 467[1]) and "the question immediately recurs upon the question reconsidered." (Mason's sec. 467[3]).

At this point the reconsidered question can be put, or other motions which are proper may be offered.

When the question reconsidered is passage or concurrence of a *bill*, a motion frequently offered at this point is reference to committee or tabling of the bill. Such motions are proper.

If the bill is referred to a standing committee or tabled (which has the effect of referring the bill to the committee on Senate Organization pursuant to Senate Rule 65[2]) then the bill is also automatically returned to the 2nd reading or amendable stage.

When the bill is reported back out of committee the question is "shall the bill be ordered to a third reading," not "shall the bill pass" or "shall the bill be concurred in."

Obviously this ruling does not cover all procedural alternatives which are proper in every case of reconsideration. Some of the more typical are mentioned however, and it is hoped that the result is a clearer understanding of proper reconsideration procedure.

FRED A. RISSER
President pro tempore

Banking bills: 2/3 vote required (obsolete April 1981)
Senate Journal, March 9, 1978, pp. 1926–1927

On Thursday, March 2, 1978, Senator Petri raised the point of order that Senate Bill 246, relating to allowing savings and loan associations to make consumer loans, was banking legislation and required a two-thirds vote to pass. The chair took the point of order under advisement.

Article XI, Section 4, of the Wisconsin Constitution provides:

The legislature shall have power to enact a general banking law for the creation of banks, and for the regulation and supervision of the banking business, provided that the vote of two-thirds of all the members elected to each house, to be taken by yeas and nays, be in favor of the passage of such law.

Perhaps the most concise and useful guidelines as to what is and is not banking legislation can be found in a 1961 ruling of the chair (1961 Senate Journal, page 1599) where the following points are made:

*general laws which apply to other institutions as well as banks are not banking legislation.

*bills which do not affect Wisconsin statute chapters 220-224 (which relate specifically to banking) are not banking legislation.

*Article XI, Section 4, must be strictly construed in the interest of effective legislation.

More detailed histories of the strict construction of Article XI, Section 4 can be found in the Senate Journal of April 14, 1977 (page 398) and the Assembly Journal of February 22, 1972 (page 3743).

Since Senate Bill 246 relates solely to the powers of savings and loan associations, not banks, and since there is nothing in Senate Bill 246 which purports to affect the creation, regulation or supervision of the banking business, the chair feels compelled to rule the point of order raised by Senator Petri not well taken.

FRED A. RISSER
President pro tempore

Constitutionality of proposal (chair cannot rule on)
Tax exemptions: referral of proposal to joint survey committee on
Senate Journal, March 27, 1978, pp. 2114–2115

On Thursday, March 16, Senator Sensenbrenner raised the point of order that Senate Bill 400 created a tax exemption and was therefore required to be referred to the Joint Survey Committee on Tax Exemptions pursuant to s. 13.52 (6) of the statutes. The chair took the point of order under advisement.

Section 13.52 (6) provides that "any proposal which...creates any new statute relating to the exemption of any property or person from any state or local taxes or special assessments... shall at once be referred to the Joint Survey Committee on Tax Exemptions..."

Senate Bill 400 provides, in part, that counties may provide law enforcement services to localities within the county and may charge the localities for services provided.

The bill provides that for cities and villages "such expenses shall be certified, returned and paid as are other county charges."

The bill further provides that for unincorporated areas "the county board may levy a tax upon all real and personal property in any unincorporated area...to reimburse the county for reasonable expenses incurred in providing such services..."

Senator Sensenbrenner contends that because Senate Bill 400 authorizes counties to levy a direct tax on unincorporated areas but does not authorize such a tax on incorporated areas that a tax exemption has thereby been created.

It is the chair's opinion that before there can be an exemption there must first be taxation. Senate Bill 400 does not exempt incorporated areas from a county tax. Rather, it is silent on the matter with the result that incorporated areas are not subject to such a tax in the first place.

Legislation which creates a tax and applies it to a certain class of people or property cannot properly be said to have simultaneously created an exemption for all other people or property not taxed.

Therefore, Senate Bill 400 does not create a tax exemption in the sense contemplated by s. 13.52 (6) and the point of order raised by Sensenbrenner is not well taken.

Prior to raising a point of order Senator Sensenbrenner questioned whether Senate Bill 400 would meet the constitutional requirement that "The rule of taxation shall be uniform..." It is not within the jurisdiction of the chair to rule on questions of constitutionality. Therefore the chair remains silent on the matter.

FRED A. RISSER
President pro tempore

Constitutional amendment (procedure on joint resolution proposing)
Tax exemptions: referral of proposal to joint survey committee on
Senate Journal, March 30, 1978, p. 2235

On Tuesday, March 28, 1978, Senator Theno moved to withdraw Senate Joint Resolution 8 from the Joint Survey Committee on Tax Exemptions. Senator Berger raised the point of order that the committee had not yet submitted a written report as required by s. 13.52 of the Wisconsin statutes.

On January 20, 1977 the chair ruled that s. 13.52 of the Wisconsin statutes did not require that Senate Joint Resolution 8 be referred to the Joint Survey Committee on Tax Exemptions. Implicit in that ruling is the absence of a requirement that a written report be submitted on the resolution.

Therefore the point of order raised by Senator Berger is not well taken. The motion made by Senator Theno is proper and the question is shall Senate Joint Resolution 8 be withdrawn from the Joint Survey committee on Tax Exemptions.

1979

Point of order under advisement: business before house
Senate Journal, June 21, 1979, pp. 549, 551

Senator Lorge raised the point of order that senate substitute amendment 1 to Senate Bill 19 was not germane.

Senator Kleczka asked unanimous consent that the bill be referred to joint committee on Finance.

Senator Lorge objected.

Senator Bablitch moved that the rules be suspended and the bill be referred to joint committee on Finance.

Senator Lorge raised the point of order that the chair took his point of order under advisement, that the bill is in the possession of the chair and, therefore, that the motion to suspend the rules and refer the bill to the joint committee on Finance is not proper.

The chair took both points of order by Senator Lorge under advisement. [. . .]

[. . .] The chair [Pres. Risser] ruled that senate substitute amendment 1 to Senate Bill 19 is germane. With that decision the question of suspending the rules is moot and the point of order raised by Senator Lorge in reference to suspending the rules is moot.

Substitute amendment: questions of germaneness
Senate Journal, October 10, 1979, p. 801

Senator Strohl raised the point of order that senate substitute amendment 3 to Senate Bill 355 was not germane.

Senator Lorge asked unanimous consent that senate substitute amendment 3 be treated as if it were germane.

Senator Bablitch objected.

The chair [Pres. Risser] ruled the point of order well taken.

Senate Bill 355 as originally drafted relates to broadening an emergency fuel assistance program and to that only.

Senate substitute amendment 3 attempts to incorporate all of the provisions of Assembly Bill 777, which relates to alternative energy incentives. The amendment would totally alter the nature of the original purpose and therefore under Senate Rule 50 (1) the amendment is not germane.

Special order: scheduling proposal as
Senate Journal, October 18, 1979, p. 854

Point of Order

Senator Chilsen raised the point of order that it would take a two-thirds vote to consider the Item Vetoes presented to the Chief Clerk as the order of the day.

Ruling of the Chair [Pres. Risser]

Senate Rules are silent on the order in which partial vetoes of a bill are to be considered. However, Senate Rule 47 (4) does state that the Senate by majority vote may direct the

consideration of amendments. It is the chair's opinion that partial vetoes may be treated as amendments and the Senate may by majority vote direct the order of consideration.

The chair ruled the point of order not well taken.

Constitutional amendment (procedure on joint resolution proposing)
Germaneness: nature or purpose of proposal
Senate Journal, October 31, 1979, p. 972

Yesterday, Senator Swan raised the point of order that senate amendment 2 to Senate Joint Resolution 28 was not germane. The question of germaneness is sometimes a close one and any judgment by the Chair [Pres. Risser] could be validly question.

Senate Rule 50 (1) reads in part: "nor should the Senate consider any substitute or amendment which relates to a different subject, is intended to accomplish a different purpose, would require a title essentially different or would totally alter the nature of the original proposal".

In this case it is the Chair's opinion that the purpose of Senate Joint Resolution 28 is to expand the repayment period for indebtedness specifically for cities of the first class and Milwaukee County for the purpose of purchasing, constructing or improving a sewerage collection for treatment system. It is the opinion of the Chair that senate amendment 2 is intended to accomplish a different purpose and therefore the point of order is well taken.

Germaneness: expanding scope of the proposal
Senate Journal, January 25, 1980, pp. 1190, 1192

Senator Murphy raised the point of order that senate amendment 1 to senate substitute amendment 4 to Assembly Bill 77 was not germane.

The chair took the point of order under advisement. [. . .]

[. . .] It is the opinion of the chair [Pres. Risser] that senate amendment 1 created a new concept and new crime. It is substantially different from senate substitute amendment 4; therefore, the chair rules the point of order well taken.

Germaneness: nature or purpose of proposal
Senate Journal, February 19, 1980, p. 1374

Earlier today the Senator from the 33rd, Senator Murphy, raised the point of order that senate amendment 2 to Assembly Bill 887 was not germane.

Senate amendment 2 would amend the title of the bill and add new language relative to attorney fees.

Senate Rule 50 (1) says in part "...nor shall the senate consider any substitute or amendment which relates to a different subject, is intended to accomplish a different purpose, would require a title essentially different or would totally alter the nature of the original proposal."

Therefore it is the opinion of the Chair [Pres. Risser] that senate amendment 2 would alter the nature of the original proposal and that the point of order is well taken.

Germaneness: nature or purpose of proposal
Senate Journal, February 21, 1980, p. 1382

On Thursday, February 7, 1980, Senator Adelman raised the point of order that senate amendment 1 to Assembly Bill 813 was not germane. The Chair [Pres. Risser] took the point of order under advisement.

Assembly Bill 813 was introduced by request of the Judicial Council to make remedial changes in contested case procedures before state agencies. Senate amendment 1, by contrast, would make changes in agency rule making procedure by: 1) requiring all agencies to adopt as administrative rule decisions in contested cases at the time they are applied to "persons other than parties to the original contested case"; 2) requiring all agencies to adopt rules establishing a process for determining who are parties to a contested case. In effect, then, this amendment makes changes in rule making while the bill does not have that intent.

Senate Rule 50 (1) states that the senate shall not consider any amendment which, "...is intended to accomplish a different purpose, would require a title essentially different or would totally alter the nature of the original proposal."

It is the opinion of the Chair that senate amendment 1 would accomplish a different purpose and would alter the nature of the original proposal and therefore the point of order raised by Senator Adelman is well taken.

Germaneness: nature or purpose of proposal
Senate Journal, February 21, 1980, p. 1388

Senator Adelman raised the point of order that senate amendment 3 was not germane.

The Chair [Pres. Risser] ruled that senate amendment 3 is identical to part of senate amendment 1 that the Chair ruled on earlier today and it is the opinion of the Chair that

senate amendment 3 would accomplish a different purpose and would alter the nature of the original proposal and therefore the point of order raised by Senator Adelman is well taken.

Germaneness: expanding scope of the proposal
Senate Journal, February 21, 1980, p. 1390

Earlier today Senator Harnisch raised the point of order that senate amendment 1 to senate substitute amendment 1 to Senate Bill 189 was not germane. The Chair [Pres. Risser] took the point of order under advisement.

Senate amendment 1 to senate substitute amendment 1 would expand the scope of the bill to the entire state. Senate Rule 50 (7) states only amendments limiting the scope of a proposal are germane. Therefore it is the opinion of the Chair that the point of order raised by Senator Harnisch is well taken.

Withdrawal motion: from committee
Senate Journal, February 28, 1980, p. 1421

On Thursday, February 21, 1980, Senator Lorge raised the point of order that the Chair [Pres. Risser] did not properly state the question before calling the roll on withdrawal of Senate Joint Resolution 9.

Page 1385 of the Senate Journal states "The question was: Shall Senate Joint Resolution 9 be withdrawn from committee on Human Services and referred to committee on Senate Organization?".

The Journal is the official record of the proceedings and does indicate that the question was properly stated. Therefore the point of order raised by Senator Lorge is not well taken.

Banking bills: 2/3 vote required (obsolete April 1981)
Senate Journal, April 2, 1980, p. 1828

Senator Lorge moved reconsideration of the vote by which Assembly Bill 495 failed to be concurred in.

Senator Chilsen raised the point of order the motion for reconsideration was not proper because Senator Lorge did not vote with the prevailing side.

The chair [Pres. Risser] ruled the point of order well taken.

1981

Germaneness: particularized detail
Senate Journal, October 6, 1981, p. 858

Earlier today, Senator Adelman raised the point of order that senate amendment 2 to senate substitute amendment 1 to Senate Bill 250 was not germane.

The bill relates generally to access to public records. Senate amendment 2, while dealing primarily with records of a certain type (those retrievable by use of an individuals name or other identifying characteristic), is also generally related to public records access.

The amendment relates to maintenance of records: what records may be maintained, how access to records may be gained, and how challenges to the accuracy of records may be made.

In regulating the maintenance of records, it also affects access to them.

A similar amendment was adopted by this body last session to an almost identical bill. A point of order was not raised at that time. It is the opinion of the chair [Pres. Risser] that the question of germaneness is a close one. Therefore, the chair will rule the amendment germane and the point of order not well taken. The body may reject the amendment and have the same effect of ruling it out of order.

Privileged resolution
Senate Journal, October 30, 1981, p. 1089

On Wednesday, October 28, Senate Resolution 13 [11] was introduced and referred to Committee on Senate Organization. Senator Chilsen of the 29th District raised the point of order that the resolution was privileged and should be taken up immediately. The chair [Pres. Risser] took the point of order under advisement.

A reading of Senate Rule 69 indicates that a privileged resolution may be taken up immediately unless referred to a calendar or committee. It would then appear that the question of whether the resolution is privileged or not has no basis for the resolution coming before the senate immediately. Since the resolution was referred to committee prior to the point of order being raised it would appear that the point of order is moot and therefore the point of order is not well taken.

Motions: proper time for making
Withdrawal motion: from committee
Senate Journal, January 27, 1982, p. 1341

On Thursday, October 29, 1981 Senator Bablitch asked unanimous consent that Senate Bill 493 be referred to the joint committee on Finance and the bill was so referred.

Before the next bill was called Senator Lorge moved that the bill be withdrawn from the joint committee on Finance and considered immediately.

Senator Bablitch raised the point of order that the motion was not properly before the Senate.

A similar point of order was raised by Senator Sensenbrenner on February 14, 1978. The chair's ruling stated in part:

"The chair recalls that in past sessions, operating under similar rules, motions to withdraw from committee have been made at other times than the eighth order.

In this case the chair finds no written rule either allowing or forbidding the Senator to make a motion to withdraw from committee at the time he made it. But there is strong precedent this session, enunciated as recently as last week by the majority leader, that motions to withdraw bills from committee will be restricted to the eighth order of business."

A rule change has since moved the order of business "Motions" from the eighth order to the fourteenth order. It is the opinion of the chair [Pres. Risser] that based on this past ruling and our precedent of the past several sessions that the point of order raised by the Senator of the 24th, Senator Bablitch, is well taken, and the motion should be made on the fourteenth order of business.

Tabling motion
Senate Journal, February 2, 1982, p. 1400

On Friday, October 30, 1981 Senator Bablitch raised the point of order that a motion to withdraw Assembly Bill 45 from committee is subject to a motion to table.

The chair [Pres. Risser] has reviewed this matter with great care. At first it would appear that a motion to withdraw is not subject to a motion to table. The chair has reviewed the Senate Journals back through the 1969 legislative session. On several occasions, by unanimous consent, and by a majority vote motions to withdraw have been placed on the

table. It would appear that the Senate has established this precedent under several presiding officers, although a ruling has never been issued.

Therefore, it is the opinion of the chair that a motion to withdraw is subject to tabling and the point of order raised by the senator from the 24th, Senator Bablitch, is well taken.

Tax exemptions: withdrawing proposal from joint survey committee on
Senate Journal, February 2, 1982, p. 1401

On Friday, October 30, 1981 Senator Hanaway asked unanimous consent that Senate Bill 38 be withdrawn from the Joint Survey Committee on Tax Exemptions and referred to the committee on Senate Organization.

Senator Berger raised the point of order that a bill cannot be withdrawn from a joint survey committee without a committee report.

The Senate has a long standing precedent of not permitting bills to be withdrawn from a joint survey committee until such time as a report is received. In this situation Senator Hanaway raises the point that the committee has submitted a report on an identical proposal in the Assembly, and that the statutes require a report on proposals, not individual bills, and therefore Senate Bill 38 could be withdrawn.

The chair has ruled on withdrawal of bills from the joint survey committees on several occasions and has held that bills may not be withdrawn without a written report. The question of a report having been made on an identical proposal being used as the report and thereby permitting withdrawal has not been addressed.

Senator Hanaway is correct in his statement that the statutes refer to reports on proposals. However, reading the entire sentence the statutes read in part: "and such report has been printed as an appendix to the bill and attached thereto as are amendments."

It is the opinion of the chair [Pres. Risser] that the statutes require a report on each proposal, whether identical with a previous one or not and that the report must be submitted in accordance with 13.52 (6).

Therefore the point of order raised by the senator of the fifth, Senator Berger, is well taken.

Germaneness: expanding scope of the proposal
Senate Journal, March 4, 1982, p. 1611

On Tuesday, March 2, 1982 the senator from the 33rd, Senator Engeleiter, raised the point of order that senate amendment 1 to assembly amendment 1 to Senate Bill 519 was not germane. The chair [Pres. Risser] took the point of order under advisement.

Assembly amendment 1 to Senate Bill 519 clarifies the action to be taken by the Fiscal Board or Common Council in the event an action has been taken by the electorate or the School Board to reorganize the city school district.

Senate amendment 1 to assembly amendment 1 proposes a new procedure to permit the Fiscal Board, Common Council or the electorate to retain the city school district by referendum and prohibit further action by the Fiscal Board or Common Council. Although the proposition would be germane to the bill it does appear to accomplish a different purpose than that of assembly amendment 1, and expand the scope thereof. Therefore it is the opinion of the chair that senate amendment 1 to assembly amendment 1 is not germane and the point of order raised by the senator from the 33rd, Senator Engeleiter, is well taken.

Germaneness: individual proposition (one amending another)
Senate Journal, March 10, 1982, p. 1670

On Tuesday, March 9, 1982, Senator from the 9th, Senator Moody, raised the point of order that senate amendment 1 to assembly amendment 1 was not germane. The chair [Pres. Risser] took the point of order under advisement.

Assembly amendment 1 deals exclusively with water carriers. Senate amendment 1 to assembly amendment 1 deals with livestock and fluid milk haulers. Senate amendment 1 to assembly amendment 1 relates to a different specific subject that [than] assembly amendment 1, therefore, pursuant to Senate Rule 50 (7), senate amendment 1 to assembly amendment 1 is not germane and the point of order raised by the Senator from the 9th, Senator Moody, is well taken.

Germaneness: individual proposition (one amending another)
Substitute amendment: questions of germaneness
Senate Journal, March 23, 1982, p. 1788

Earlier today the Senator of the 29th, Senator Chilsen, raised the point of order that senate substitute amendment 1 was not germane. Senate substitute amendment 1 to Assembly Bill 303 relates to a taxpayer check-off for various programs and purposes, while Assembly Bill 303 relates to a check-off solely for endangered resources.

Senate Rule 50 (7) reads 'A substitute or amendment relating to a specific subject or to a general class is not germane to a bill relating to a different specific subject, but an amendment limiting the scope of the proposal is germane.

It is the opinion of the chair [Pres. Risser] that senate substitute amendment 1 would expand the scope of the original proposal, not limit the scope, and that senate substitute

amendment 1 relates to a general class (i.e., various programs), and Assembly Bill 303 relates to the specific subject of endangered resources, and therefore the amendment is not germane. The point of order raised by the senator of the 29th, Senator Chilsen, is well taken.

Withdrawal motion: from committee

Senate Journal, March 23, 1982, pp. 1790–1791

Point of Order

Senator Bablitch raised the point of order that pursuant to Senate Rule 41 the motion to withdraw Assembly Bill 621 from committee on Human Services and refer to committee on Senate Organization was not properly before us at this time.

Ruling of the Chair

A similar point of order was raised on March 25, 1976 on Assembly Bill 421. On page 2165 of the Journal of the Senate March 25, 1976, the ruling reads: "As it relates to the point of order raised on Assembly Bill 421, the chair ruled that pursuant to Senate Rule 41, a bill could not be withdrawn from committee when a public hearing has already been scheduled. Any attempt to do so would require a suspension of the rules and a two-thirds vote."

On page 540 of the Journal of the Senate March 16, 1971, Senator from the 14th, Senator Lorge, proposed this rule in Senate Resolution 13. The analysis reads: "This proposal would prevent a motion to recall a bill from committee from taking effect prior to hearing if such has been scheduled".

Members have raised the question of the definition of a week. The chair [Pres. Risser] has reviewed the rules and has found no definition of a week by our rules; however, the Index to the Senate Rules and Senate Rule 31 (4) states that Webster's New International Dictionary will be the standard for language usage. Webster's New International Dictionary defines a week as: "any 7 consecutive days."

A hearing is scheduled on the matter for Monday, March 29, 1982. Therefore, based on past precedent and the definition of a week, it is the opinion of the chair that in accordance with Senate Rule 41 (a) the bill cannot be withdrawn at this time and the point of order raised by the Senator of the 24th, Senator Bablitch, is well taken.

Reconsideration motion

Senate Journal, March 25, 1982, p. 1841

On Wednesday, March 24, 1982 the Senator from the 3rd, Senator Kleczka, raised the point of order that the motion to reconsider the vote by which Senate Bill 789 was referred to the

committee on Aging, Business and Financial Institutions and Transportation made by the Senator from the 9th, Senator Moody, was not proper.

On page 991, Journal of the Senate June 25, 1975, the chair ruled that a motion to withdraw a matter from committee was not subject to reconsideration.

Section 390, paragraph 2, Mason's Manual reads: The motion to refer to committee may not be reconsidered but the matter referred to committee may be withdrawn.

Section 456 of Mason's Manual reads in part: Under the rules of parliamentary law, the procedural motions, such as to recess, to lay on the table and to refer to committee are not subject to reconsideration.

Therefore, it is the opinion of the chair [Pres. Risser] that the motion is not proper and the point of order raised by the Senator from the 3rd, Senator Kleczka, is well taken.

Chamber: conduct in chamber during session
Veto review session: conduct of
Senate Journal, June 14, 1982, p. 2239

On Thursday, June 10, the Senator from the 15th, Senator Cullen, raised the point of order that the Senator from the 31st, Senator Harnisch, is recorded as having voted while the Senate was under call, but was not currently in his seat. The chair [Pres. Risser] took the point of order under advisement.

At the time the point of order was raised the president took note that the Senator from the 31st, Senator Harnisch, was not present. In order for the Senate to transact business under call, all members must be present. All business in reference to the question on which the call was placed should have ceased at the time it was noted that not all members were present. The chair, immediately following the time the point of order was taken under advisement, noticed that the Senator from the 31st returned to the chambers. It is the opinion of the chair that the point of order is well taken. However, since the Senator of the 31st had returned the vote is considered valid.

Point of order under advisement: timeliness of ruling
Senate Journal, June 14, 1982, p. 2240

On Saturday, June 12, the Senator from the 29th, Senator Chilsen, raised the point of order that the time limit for the president to rule on a point of order raised by the Senator from the 15th, Senator Cullen, on Thursday, June 10, had expired. The chair [Pres. Risser] took Senator Chilsen's point of order under advisement.

The chair reviewed the Journal of the Senate from the time the original point of order

was raised and would like to draw the attention of the body to the fact that the chair has not had an opportunity to present his decision until this morning, because the senate has by unanimous consent recessed or adjourned or not had a quorum present to transact business. Since the chair has ruled, it is the opinion of the chair that the point of order raised by the Senator from the 29th, Senator Chilsen is moot.

1983

Fiscal estimate: not required
Senate Journal, October 6, 1983, p. 389

Earlier today the Senator from the 10th, Senator Harsdorf, raised the point of order that Joint Rule 41 (a) required that Assembly Bill 16 have a Fiscal Estimate prepared.

Joint Rule 49 requires the presiding officer to determine if a fiscal estimate is required. A reading of the bill does not reveal any immediate indication of where there may be an increase or decrease in fiscal liability to local or state government. Since Joint Rule 41 (a) and Sec. 13.093 (2) (a) of the statutes require that only bills making an appropriation or increasing or decreasing existing appropriations or state or general local government fiscal liability or revenues shall have a fiscal estimate, if [it] is the opinion of the chair [Pres. Risser] that Assembly Bill 16 does not fall into this category, does not therefore require a fiscal estimate and the point of order raised by the Senator from the 10th, Senator Harsdorf, is not well taken.

Germaneness: nature or purpose of proposal
Substitute amendment: questions of germaneness
Senate Journal, October 11, 1983, p. 403

Earlier today, the Senator from the 29th District, Senator Chilsen, raised the point of order that senate substitute amendment 1 to Assembly Bill 93 was not germane.

The original bill would expand the current requirement to provide instruction on prevention of accidents and highway safety, to include the relationship of alcohol and controlled substances and highway safety. The substitute amendment would eliminate the current law on requiring instruction on prevention of accidents and highway safety. The point of order is well taken, and the substitute amendment is not germane.

Germaneness: nature or purpose of proposal
Germaneness: particularized detail
Substitute amendment: questions of germaneness
Senate Journal, March 15, 1984, p. 720

On Tuesday, March 13, 1984 the Senator from the 4th, Senator Johnston raised the point of order that senate substitute amendment 1 to Senate Bill 500 was not germane. Specifically the Senator from the 4th raised the point that section 17 of the amendment relating to special license plates for prisoners of war expanded the scope of the bill. The chair [Pres. Risser] took the point of order under advisement.

Section 17 of the substitute amendment amends section 341.14 (6) of the statutes to add the new veteran benefit group (Lebanon and Grenada) to those already referenced for special Ex-Prisoner of War Plates. Section 341.14 (6) currently provides the special plates for all defined as "Veteran" for state benefits.

Mason's Manual Section 402 (2) reads as follows "To determine wheher [whether] an amendment is germane, the question to be answered is whether the question is relevant, appropriate, and in natural and logical sequence to the subject matter of the original proposal."

It is the opinion of the chair that it is appropriate and logical to insure that all veteran benefits are extended to the new group. Therefore the point of order raised by the Senator from the 4th is not well taken and the substitute amendment is germane.

Germaneness: individual proposition (one amending another)
Substitute amendment: questions of germaneness
Senate Journal, March 22, 1984, p. 762

On Wednesday, March 21, 1984 the Senator from the 11th, Senator Davis, raised a point of order that senate substitute amendment 1 to Assembly Bill 500 was nongermane. The chair [Pres. Risser] took the point of order under advisement.

Assembly Bill 500 relates to the vote requirements to terminate the operations of a drainage district. Senate substitute amendment 1 adds language relating to the organization of a drainage district in that it sets new requirements on the DNR and the boards in relation to review and reports on activities of drainage districts. It is the opinion of the chair that the senate substitute amendment adds language relating to a different specific subject than the original bill, that it expands and not limits the scope of the original proposal and therefore in accordance with Senate Rule 50 (1), (2) and (7), it is the opinion of the Chair that the

amendment is not germane and the point of order raised by the Senator from the 11th, Senator Davis, is well taken.

Germaneness: individual proposition (one amending another)
Senate Journal, April 5, 1984, p. 862

Earlier today the Senator from the 21st, Senator Strohl, raised the point of order that senate amendment 1 to senate substitute amendment 1 to Assembly Bill 742 was not germane. The chair [Pres. Risser] took the point under advisement.

It is the opinion of the chair that senate amendment 1 to senate substitute amendment 1 relates to a different specific subject than that of Assembly Bill 742 and in accordance with Senate Rule 50 (7), the amendment is not germane and the point of order raised by the Senator of the 21st, Senator Strohl, is well taken.

Germaneness: individual proposition (one amending another)
Senate Journal, April 5, 1984, p. 867

Yesterday the Senator from the 21st, Senator Strohl, raised the point of order that senate amendment 1 to Assembly Bill 217 was not germane. The chair [Pres. Risser] took the point under advisement.

Senate amendment 1 would amend Sub Chapter III of Chapter 655 of the Statutes relating to Insurance Provisions for Health Care Liability. Assembly Bill 217 relates to the Patients Compensation Panels and does not deal with the insurance provisions. Therefore it is the opinion of the chair that senate amendment 1 relates to a different specific subject than that of Assembly Bill 217 and in accordance with Senate Rule 50 (7), the amendment is not germane and the point of order raised by the Senator of the 21st, Senator Strohl, is well taken.

Germaneness: issue already decided (substantial similarity)
Substitute amendment: questions of germaneness
Senate Journal, April 6, 1984, p. 873

On Wednesday, April 4, 1984, the senator from the 15th, Senator Cullen, raised the point of order that senate substitute amendment 2 to Senate Bill 256 was not germane.

The senator from the 15th raised the point that senate substitute amendment 2 was identical in effect to Senate Bill 114 and senate substitute amendment 1.

Upon reading of the substitute, the entire first page and 18 lines of the 25 lines of material on the 2nd page are identical to Senate Bill 114 and senate substitute amendment 1. Lines 19 and 20 on page 2 set out a new prohibitive practice not identified in senate substitute amendment 1 or Senate Bill 114; however, the practice is covered under current law. Lines 23 thru 25 on page 2 further define lines 10 and 11 on page 2.

It appears to the chair [Pres. Risser] that the senator from the 29th, Senator Chilsen, is attempting to bring forth the same language as Senate Bill 114 and senate substitute amendment 1, by adding some new material to the amendment that is already current law. The chair has serious questions about this practice; however, when the question of germaneness is close, Mason's Manual Sec. 401 (5) states in part: "The Presiding officer should never rule an amendment out of order unless he is certain that it is."

Therefore, the chair is going to rule the point of order not well taken and the amendment is germane.

1985

Germaneness: expanding scope of the proposal
Germaneness: nature or purpose of proposal
Substitute amendment: questions of germaneness
Senate Journal, October 1, 1985, p. 359

On Tuesday, September 24, 1985, the Senator from the 28th, Senator Adelman, raised the point of order that senate substitute amendment 1 to Senate Joint Resolution 47, introduced by the Senator from the 20th, Senator Stitt, was non-germane. The Chair [Pres. Risser] took the point of order under advisement.

Senate substitute amendment 1 to Senate Joint Resolution 47 adds a considerable amount of new language related to memorializing Governor Earl to retain Wisconsin's property tax and rent credits. The title of the resolution is expanded to include this language.

Senate Rule 50 (1) states: No standing committee shall report any substitute amendment for any proposal originating in either house referred to such committee nor shall the Senate consider any substitute or amendment which relates to a different subject, is intended to accomplish a different purpose, would require a title essentially different or would totally alter the nature of the original proposal.

It is the opinion of the chair that senate substitute amendment 1 does not comply with the provisions of Senate Rule 50 (1) and therefore, the point of order is well taken.

Germaneness: special session call (must not be exceeded)
Special session: proposal or amendment not germane to the call
Senate Journal, January 29, 1986, special session, p. 548

The Senator from the 27th, Senator Feingold, raised the point of order that senate amendment 1 as it relates to the securities exemption is not germane.

The governor's call and the bill relate to reducing the cost of state government. The provisions in senate amendment 1 relating to the securities exemption appear to reduce the cost of government.

Therefore, it is the opinion of the chair [Pres. Risser] that the provisions questioned are germane and the point of order is not well taken.

Finance: referral of proposal to joint committee on
Suspension of law (express or implied) under Stitt case
Senate Journal, March 6, 1986, pp. 663–664

Senator from the 6th, Senator George, raised the point of order that referral to the joint committee on finance of Senate Bill 31 was required.

The Chair took the point of order under advisement.

The Senator from the 6th made reference to the fiscal estimates attached to Senate Bill 31 that were prepared in accordance with Joint Rule 41, and the fact that they indicate a negative impact on state funds and therefore require Senate Bill 31 to be referred to the joint committee on finance.

The Senator from the 6th, the Senator from the 20th, Senator Stitt, and others who were heard on the point of order spoke at length about the case law in reference to this question, in particular, the State ex rel. La Follette v. Stitt (Stitt case) and State ex rel. General Motors Corp v. Oak Creek (Oak Creek case).

The Chair is aware of a long list of various decisions relating to a similar question as to whether a legislative act may be invalidated by a court for failure of the legislature to follow its rules of procedure of statutory requirements. As far back as 1891 (McDonald v. State, 80 Wis. 407, 411-412) stated that 'no inquiry will be permitted to ascertain whether the two houses have or have not complied strictly with their own rules in their procedure on the bill, intermediate its introduction and final passage.'

In 1923, State v. P. Lorillard Co., 181 Wis. 347 (at page 372), the question was:

...whether sec. 13.06, (1921) Stats., which required the legislature to refer appropriation bills to the joint committee on finance before passage, meant that such bills had to be referred by each house before final passage. This court, in rejecting the argument that each

house had to refer the proposal, pointed out that there was no constitutional requirement involved and moreover, that the statute as written did not require reference by each house. This court stated: 'This is a question of policy for legislative, not judicial, determination.'

Similarly, the Wisconsin Supreme Court ruled in 1968, in Outagamie County v. Smith, 38 Wis.2d 24, 41, that:

This court will not interfere with the conduct of legislative affairs in the absence of a constitutional mandate to do so or unless either its procedures or end result constitutes a deprivation of constitutionally guaranteed rights. Short of such deprivations which give this court jurisdiction, recourse against legislative errors, nonfeasance or questionable procedure is by political action only.

In only one case, State ex rel. General Motors Corp. v. Oak Creek, 49 Wis.2d 299, 329 (1971), had the Wisconsin Supreme Court ever implied that a statute might be invalid because the Legislature failed to comply with the mandate of a legislative procedure rule expressed as a statute.

In the most recent case, State ex rel. La Follette v. Stitt, the court commented directly on the Oak Creek case. Said the court in the Stitt case:

...Because this dicta is inconsistent with the uniform holding of prior Wisconsin cases and the general rule which limits a court's authority to invalidate legislation only for constitutional violations, we withdraw this language in the Oak Creek case and expressly disavow any implication that this court will invalidate legislation when it finds the legislature has violated a procedural statutory provision in passing an act.

Further the court stated:

...this court will not determine whether internal operating rules or procedural statutes have been complied with by the legislature in the course of its enactments...we will not intermeddle in what we view, in the absence of constitutional directives to the contrary, to be purely legislative concerns...

Courts are reluctant to inquire whether the legislature has complied with legislatively prescribed formalities in enacting a statute. This reluctance stems from separation of power and comity concepts, plus the need for finality and certainty regarding the status of a statute (citing Baker v. Carr, 369 U.S. 186, 215 (1962))...

If the legislature fails to follow self-adopted procedural rules in enacting legislation, and such rules are not mandated by the constitution, courts will not intervene to declare the legislation invalid. The rationale is that failure to follow such procedural rules amounts to an implied ad hoc repeal of such rules.

The Stitt case also quoted Sutherland's Statutory Construction, volume 1 (94th ed.) sec. 7.04 at page 264:

The decisions are nearly unanimous in holding that an act cannot be declared invalid for failure of the house to observe its own rules. Courts will not inquire whether such rules have been observed in the passage of the act. Likewise, the legislature by statute or joint resolution cannot bind or restrict itself or its successors as to the procedure to be followed in the passage of legislation.

The Attorney General in 63 OAG 305 (1974) stated:

'A bill...would probably result in a valid law even if the procedures specified in (the statutes) are disregarded by the legislature. When an act is passed by both houses, in accordance with constitutional requirements, the courts will not inquire into whether statutory legislative procedures were followed.'

Although the case history indicates that the courts will not intervene to declare legislation invalid for failure of the legislature to follow its rules or procedures, that is not reason for this Senate to disregard its own parliamentary procedures.

Section 13.093(1) governs the referral of bills to the joint committee on finance. It reads as follows: 'All bills introduced in either house of the legislature for the appropriation of money, providing for revenue or relating to taxation shall be referred to the joint committee on finance before being passed.'

The broad language in this section has been interpreted and the precedent has been established requiring every bill with a definite negative state fiscal effect, no matter how small, to be referred to the joint committee on finance.

If a fiscal effect is anticipated but cannot be accurately estimated the bill is usually referred to the joint committee on finance.

The precedent of the Senate is quite clear, bills with a definite negative fiscal estimate have been referred to the joint committee on finance. Therefore, it is the opinion of the Chair that Senate Bill 31 be referred to the joint committee on finance and the point of order is well taken.

FRED A. RISSER
President of the Senate

Germaneness: issue already decided (substantial similarity)
Senate Journal, March 13, 1986, pp. 696–697

The Senator from the 11th, Senator Davis, raised a point of order that senate amendment 1 to assembly amendment 23 to Senate Bill 120 was not germane as it was incorporating the language of Senate Bill 36 as an amendment. The Chair [Pres. Risser] ruled the point

of order not well taken. By unanimous consent the Senator from the 11th asked that the ruling be printed in the Journal. The Chair has taken the liberty to formalize the ruling by doing further research.

Senate amendment 1 in the first paragraph deletes a substantial amount of material from the original proposal which is not done in Senate Bill 36. In addition, on page 2 of the amendment, the amendment makes changes to section 11.26(12m) of the Statutes. No where in Senate Bill 36 is that section of the statutes affected.

On April 6, 1984, the Chair ruled on a similar point of order raised by the Senator from the 15th. It may be found on page 873, Journal of the Senate, April 6, 1984. It reads in part "It appears to the Chair that the Senator from the 29th, Senator Chilsen, is attempting to bring forth the same language as Senate Bill 114 and senate substitute amendment 1 by adding some new material to the amendment that is already current law. The Chair has serious questions about this practice; however, when the question of germaneness is close, Mason's Manual Section 401(5) states in part: "The Presiding Officer should never rule an amendment out of order unless he is certain that it is." In this case the Chair ruled the point of order not well taken and permitted the amendment to be debated.

The Chair based the ruling of germaneness of senate amendment 1 to assembly amendment 23 to Senate Bill 120 on this ruling, and therefore ruled the point of order not well taken.

Germaneness: issue already decided (substantial similarity)
Senate Journal, March 18, 1986, p. 716

On March 11, 1986, the Senator from the 8th, Senator Czarnezki, raised the point of order that senate amendment 2 to Assembly Bill 303 was not germane in that it was identical to Senate Bill 455. The chair took the point of order under advisement.

It is unusual that two similar points of order relating to the introduction of amendments which are identical to bills currently pending in the Senate be raised. A close reading of senate amendment 2 reveals that the content of senate amendment 2 is identical to that of Senate Bill 455.

Senate Rule 50(6) reads in part: "An identical amendment or an amendment identical in effect to one previously rejected as another amendment to the same bill or identical with a proposal currently before the Senate is not germane."

There is no doubt that senate amendment 2 is identical to Senate Bill 455. Therefore, it is the opinion of the chair [Pres. Risser] that senate amendment 2 to Assembly Bill 303 is not germane and the point of order raised by the Senator from the 8th is well taken.

Germaneness: individual proposition (one amending another)
Senate Journal, March 18, 1986, pp. 716–717

On Tuesday, March 11, 1986, the Senator from the 30th, Senator Van Sistine, raised the point of order that senate amendment 2 to Assembly Bill 387 was not germane. Further, the Senator raised the same question on amendments 3, 4 and 5. The chair [Pres. Risser] took the point of order under advisement.

Senate Rule 50(3) reads as follows: "The Senate may consider the germaneness of senate substitutes and amendments only, and only when such substitute or amendment is before the Senate." Therefore, the chair will rule only on senate amendment 2, although I have looked at the other amendments and I am prepared to rule should the point be raised.

Senate amendment 2 to Assembly Bill 387 introduces new language to the bill relating to *actions* in product liability. The original bill relates to product liability insurance reports. Mason's Manual Section 402(1) reads in part: "members have the right to vote separately on each question." Senate Rule 50(7) reads in part as follows: "A substitute or amendment relating to a specific or to a general class is not germane to a bill relating to a different specific subject."

Senate amendment 2 introduces a different specific question that should be voted on separately. Therefore, it is the opinion of the chair that the amendment is not germane and the point of order raised by the Senator of the 30th is well taken.

Germaneness: expanding scope of the proposal
Senate Journal, March 19, 1986, pp. 731–732

On Thursday, March 13, 1986, the senator from the 28th, Senator Adelman, raised the point of order that senate amendment 1 to senate substitute amendment 1 to Assembly Bill 425 was not germane. The chair took the point of order under advisement.

Assembly Bill 425 and senate substitute amendment 1 thereto relate to videotaped statements and depositions by children. Senate amendment 1 to senate substitute amendment 1 would add new language to the bill relating to the prosecution of cases of sexual assault involving a young child. The bill itself speaks only to videotaped statements and depositions and the rights of the defendants in regards to use of such testimony. The chair is unable to find any language which would relate to the prosecution of sexual assault cases involving young children. The amendment in fact amends the relating clause of the bill to add such language.

Therefore, it is the opinion of the chair [Pres. Risser] that senate amendment 1 would expand the scope of the bill and in accordance with Senate Rule 50, the amendment is not germane and the point of order raised by the senator from the 28th is well taken.

Germaneness: expanding scope of the proposal
Senate Journal, March 19, 1986, p. 732

On Thursday, March 13, 1986, the senator from the 5th, Senator Lee, raised the point of order that senate amendment 1 to Assembly Bill 9 was not germane. The chair took the point of order under advisement.

Assembly Bill 9 would amend current law to change from 10 days to 30 days the amount of time a town has to file with a county proposing to amend the county zoning law the town's resolution disapproving the proposed amendment.

Senate amendment 1 would create new law to allow a town to rescind its approval of a county zoning ordinance. The chair will quote Section 402(2) of Mason's Manual of Legislative Procedure: "To determine whether an amendment is germane, the question to be answered is whether the question is relevant, appropriate, and in a natural and logical sequence to the subject matter of the original proposal."

The introduction of the new language of senate amendment 1 does not appear to answer the above criteria. To add language permitting total withdrawal from county zoning to a bill which merely extends the review of a town board for proposed changes would be greatly expanding the scope of the original proposal.

Therefore, it is the opinion of the chair [Pres. Risser] that senate amendment 1 to Assembly Bill 9 is not germane and the point of order raised by the senator from the 5th is well taken.

Germaneness: expanding scope of the proposal
Senate Journal, March 19, 1986, p. 732

On Tuesday, March 18, 1986, the senator from the 28th, Senator Adelman, raised the point of order that senate amendment 2 to Assembly Bill 407 was not germane. Assembly Bill 407 relates to a number of issues dealing with public records at the state and local unit of government level. The bill deals with reproduction of records, preservation of essential records, the DHSS microfilm laboratory and state forms management.

Senate amendment 2 would outline the procedures used by a city of the 1st class to charge for reproduction of records and defines what may be included in "actual costs".

The bill itself does have language in it dealing with reproduction of records; however, this language only deals with a custodian making a photographic reproduction to be maintained in place of the original. Nowhere does the bill relate to providing copies of public documents to the public, nor the process for establishing a fee for such service. Therefore, it is the opinion of the chair [Pres. Risser] that the amendment is not germane and the point of order raised by the senator from the 28th is well taken.

Germaneness: particularized detail
Senate Journal, March 25, 1986, p. 789

Earlier today the senator from the 28th, Senator Adelman, raised the point of order that senate amendment 2 to Assembly Bill 474 was not germane.

The amendment relates to grounds for termination of parental rights. The bill among other things does create additional factors which the court is required to consider in making a child custody determination. It is therefore the opinion of the chair that senate amendment 2 to Assembly Bill 474 is germane and the point of order is not well taken.

Germaneness: limiting scope of proposal
Senate Journal, March 26, 1986, p. 800

On Wednesday, March 19, 1986, the senator from the 27th, Senator Feingold, raised the point of order that senate amendment 3 to Assembly Bill 729 was not germane. The Chair took the point of order under advisement.

The Chair has examined the amendment and finds that it provides an exemption for certain organizations from including in their contract to provide services a non-discrimination clause relating to sexual orientation. The amendment has the effect of limiting the scope of certain provisions of the proposal.

Therefore, in accordance with Senate Rule 50, it is the opinion of the Chair [Pres. Risser] that the amendment is germane, and the point of order raised by the senator from the 27th is not well taken.

1987

Retirement systems: referral of proposal to joint survey committee on
Senate Journal, June 18, 1987, pp. 239–240

The Senator from the 11th, Senator Davis, has raised the point of order that pursuant to Section 13.50 (6) (a) and Joint Rules 41 and 42 senate amendment 47 to senate substitute amendment 1 to Senate Bill 100 (the Executive Budget Bill) was required to be referred to the Joint Survey committee on Retirement Systems and have a report submitted.

Senate amendment 47 does contain provisions affecting the public retirement system.

Section 13.50 (6) (a) directs that:

'No bill or amendment thereto creating or modifying any system for, or making any

provision for, the retirement of or payment of pensions to public officers or employes, shall be acted upon by the legislature until it has been referred to the joint survey committee on retirement systems and such committee has submitted a written report on the proposed bill."

Joint Rule 41 (b) directs that:

"Executive budget bills introduced under section 16.47 (1) of the statutes are exempt from the fiscal estimate requirement under par. (a) but shall, if they contain provisions affecting a public retirement fund or providing a tax exemption, be analyzed as to those provisions by the respective joint survey committee."

Joint Rule 42 (b) reads in part as follows:

"Bills affecting a public retirement fund shall be referred to the joint survey committee on retirement systems under section 13.50 of the statutes."

The question is whether the language above requires each amendment to be referred to the Joint Survey committee on Retirement Systems and that a written report be submitted on each amendment.

Several previous rulings of the chair have application in this case. On October 10, 1973 (1973 Senate Journal page 1691) in response to a point of order raised by Senator McKenna that a retirement bill was improperly before the senate for a number of reasons, one being that a report was not received on all amendments; the chair's ruling reads in part as follows:

"there is no requirement for a report by the committee on amendments".

On November 9, 1977 (1977 Senate Journal page 140) the chair ruled on a point of order raised by Senator Sensenbrenner that the Joint Survey committee on Retirement Systems was required to act on senate substitute amendments 1 and 2 to Special Session Senate Bill 2.

The chair's ruling reads in part:

"To read Senate Rule 54 as requiring such a report for each amendment and substitute amendment would be a perversion of the rules and present unlimited opportunity for delay."

Section 13.50 (6) (b) reads as follows:

"No bill or amendment thereto creating or modifying any system for the retirement of public employes shall be considered by either house until the written report required by par. (a) has been submitted to the chief clerk. Each such bill shall then be referred to a standing committee in the house in which introduced. The report of the joint survey committee shall be printed as an appendix to the bill and attached thereto as are amendments."

Since the statutes require the bill to be referred to a standing committee after a report is submitted it is clear that the bill and amendments thereto are to be referred at the time of introduction and that rereferral of amendments after an initial report was submitted was not contemplated, nor is it required.

Tax exemption bills which are handled by a statutory committee similar in structure and operation to the joint retirement committee, are required to have only a single report and rereferral upon introduction of an amendment is not required.

Joint Rules 41 and 42 relate to preparation of fiscal estimates. Joint Rule 41 (2) clearly states that:

"Fiscal estimates are required on original bills only and not on substitute amendments or amendments."

Therefore, it is clear to the chair that reports are required under these rules only for bills.

It is therefore the opinion of the chair that a referral of senate amendment 47 to senate substitute amendment 1 to Senate Bill 100 to; and a report by, the Joint Survey committee on Retirement Systems, is not required and the point of order is not well taken.

FRED A. RISSER
President of the Senate

Retirement benefits bill: 3/4 vote on passage
Senate Journal, June 18, 1987, pp. 241–242

The Senator from the 11th, Senator Davis, raised the point of order that Senate Bill 100 (the Executive Budget Bill) was not passed and that in accordance with the provisions of Article IV, Section 26 and Joint Rule 12(2)(a) a three-fourths majority of all members elected (25) is required to pass the bill. The vote on passage was 19 Ayes - 14 Noes.

Article IV, Section 26 reads as follows:

> 'The legislature shall never grant any extra compensation to any public officer, agent, servant or contractor, after the services shall have been rendered or the contract entered into; nor shall the compensation of any public officer be increased or diminished during his term of office except that when any increase or decrease provided by the legislature in the compensation of the justices of the supreme court or judges of any court of record shall become effective as to any such justice or judge, it shall be effective from such date as to each of such justices or judges. This section shall not apply to increased benefits for persons who have been or shall be granted benefits of any kind under a retirement system when such increased benefits are provided by a legislative act passed on a call of ayes and noes by a three-fourths vote of all the members elected to both houses of the legislature, which act shall provide for sufficient state funds to cover the costs of the increased benefits."

Joint Rule 12 (2) (a) makes reference to the special vote requirement of Article IV, Section 26 of the constitution.

The Chair would remind the membership that it is not the right of the Chair to rule on the constitutionality of a proposal. However, it is the responsibility of the Presiding Officer to enforce the rules of the body and insure compliance with established parliamentary practice to include those procedures required by the state constitution.

The Senator from the 11th, Senator Davis, made reference to language on page 27 of senate amendment 47 to senate substitute amendment 1 to Senate Bill 100, relating to military service credit and transfer of $230,000,000 from the transaction amortization account of the fixed retirement investment trust to the appropriate reserve of the fixed retirement investment trust.

The first point in reference to military credits does not have an impact on the benefits of those persons currently receiving an annuity. The amendment allows credit for military service to certain current employes. The second point, relating to the transfer of funds is an accounting transaction that once again does not provide an increase in benefits. The transfer of funds has an effective date of July 1, 1987. The date of occurrence of the transfer does not have an impact on the benefits of current annuitants. The chair is aware that a portion of the dollars being transferred will be used as a special investment dividend to provide an increase to persons currently receiving a supplemental benefit. Additional language in the amendment dictates that the amount of this dividend shall be equal to a supplemental benefit currently received by these annuitants.

The resolution which inserted the current retirement language in Article IV, Section 26 was 1973 Senate Joint Resolution 15. The ratification question put to the voters was: Shall Section 26 of Article IV of the Constitution be amended to permit the legislature to increase the pensions of persons who have already retired under any public retirement system (such retirement benefits already may be granted to teachers), and to require the state to provide sufficient state funds to cover the costs of the increased benefits to all persons retired under a public retirement fund? In addition, the Joint Survey committee on Retirement Systems report on Senate Joint Resolution 15 spoke only to the legislature taking action to increase benefits for "retired" persons.

The purpose of the new language was to enable the legislature to increase pensions for those persons who are retired, not to further restrict the legislature's authority to increase benefits for current employes. The Supreme Court recognized the legislature's authority to increase benefits for those who are currently employed in State ex. rel. Dudgeon v Levitan, 181 Wis. 326, 193 N.W. 499 (1923).

The commonly accepted interpretation of the language contained in Article IV, Section 26, is that the special vote requirement applies when increased benefits are provided to persons

who have been granted benefits or have left employment covered by the system and are eligible for benefits at a future date. The chair concurs with this interpretation of Article IV, Section 26 of the Constitution.

The chair has not located language in senate amendment 47 or senate substitute amendment 1 that would provide for an increase in benefits to any current annuitant or person who is no longer in employment covered by the system that is eligible for benefits in the future.

Therefore, it is the opinion of the Chair that Article IV, Section 26 of the Constitution and Joint Rule 12(2)(b) do not apply to passage of Senate Bill 100, and the point of order is not well taken.

FRED A. RISSER
President of the Senate

Retirement benefits bill: 3/4 vote on passage
Senate Journal, October 21, 1987, p. 422

The Senator from the 19th District, Senator Ellis, has raised the point of order that in accordance with Section 26, Article IV of the Wisconsin Constitution, Assembly Bill 462 requires a three/fourths majority vote for concurrence.

The Chair [Pres. Risser] has had an opportunity to study the contents of Assembly Bill 462 as it relates to the special vote requirement.

The Chair would refer the membership to an earlier ruling on this subject as it related to the passage of Senate Bill 100 (the Executive Budget Bill). At that time the Chair ruled that the extraordinary vote requirement of Section 26, Article IV of the Wisconsin Constitution applied when increased benefits are provided to persons who have been granted benefits or have left employment covered by the system and are eligible for benefits at a future date. (See Ruling of the Chair, page 241, Journal of the Senate, June 18, 1987.)

Assembly Bill 462 contains the following provisions:

1. Normal retirement age is set at age 62 for general employes.

2. Benefit reduction for retirement prior to age 62 is reduced from 4.8% per year to 2.4% for a ten year period (this would make it easier for employes to retire early as they would not lose as much in benefits).

3. Early retirement window. The bill provides a three-year window for early retirement (rule of 62/23 and 55/25). Each year of service over 23 to 25 minimum reduces retirement age by one year.

4. Multiplier for protective service is brought into conformity with Federal Age Discrimination Law.

5. Accelerated recognition of long-term capital gains.

6. Temporary increase in interest assumption to offset benefit improvements.

7. A 2% reduction in interest credited to employes accounts (from 5% to 3%).

8. Vesting rights revised. New employes are vested after 5 years of service instead of immediate vesting.

9. Provides health insurance plan for annuitants who do not have a group health plan.

10. Provides for a reduction in employer contributions.

The changes related to the accelerated recognition of long-term capital gains are the only changes in the bill that could possibly cause a three/fourths vote requirement. As part of the accelerated recognition of long-term capital gains, 600 million dollars is transferred from the transaction amortization account to either the fixed annuity reserve or the fixed employer accumulation reserve. In addition, the distribution formula of the Fixed Retirement Investment Trust is amended to provide an amount equal to the current income, plus 10% of the transaction amortization account. Currently the formula provides for an amount equal to the current income, plus 7%.

The Chair points out that these changes alone do not provide for an increase in benefits to current annuitants, although current law provides a vehicle for a portion of these funds to be used by the Employe Trust Fund Board to provide dividend payments to annuitants. The Chair is of the opinion that Assembly Bill 462 in and of itself does not increase benefits for current annuitants or participants of the retirement fund who are no longer employed. Therefore, the Chair is of the opinion that Assembly Bill 462 does not require the extraordinary majority as required by Article IV, Section 26, of the Wisconsin Constitution. A simple majority only is required. The point of order is not well taken.

Motions: priority of considering
Motions: proper time for making
Point of order: appeal of ruling
Point of order under advisement: business before house
Senate Journal, October 27, 1987, p. 453

On Wednesday, October 21, 1987, the senator from the 19th, Senator Ellis, raised the point of order that a motion to appeal the decision of the Chair takes precedence over the motion to table a proposal.

The senator from the 21st, Senator Strohl, had the floor after the Chair had ruled on a pending point of order in relating to Assembly Bill 462. The senator from the 21st asked unanimous consent that the bill be laid on the table. An objection was heard. The senator was then going to move to lay the bill on the table, when he yielded to the senator from the 11th, Senator Davis, who then appealed the ruling of the Chair. The senator from the 21st then moved to table the bill.

Section 230, (7) of Mason's Manual of Legislative Procedure reads as follows: "When an appeal has been taken from a decision of the presiding officer, no new business is in order until the appeal has been disposed of.

The motion to appeal is an incidental question relating to the general procedural nature of the senate. Therefore, it takes precedence over any main motion relating to the matter under consideration.

Therefore, it is the opinion of the Chair that the motion to appeal the decision of the Chair takes precedence over the motion to table, and the point of order raised by the senator from the 19th is well taken.

FRED A. RISSER
President of the Senate

Germaneness: individual proposition (one amending another)
Senate Journal, March 22, 1988, p. 742

On Thursday, March 17, 1988, the Senator from the 4th, Senator Ulichny, raised the point of order that senate amendment 6 to Senate Bill 191 was not germane.

Senate amendment 6 as proposed by the Senator from the 20th, Senator Stitt, would substitute the word "individual" for "Human Being" in several locations throughout Senate Bill 191.

Section 939.22(16) of the Statutes defines "Human Being" in a specific manner. "Human Being" when used in the homicide sections means "one who has been born alive". The Chair is unable to locate a definition of the word "individual" in the Statutes. Webster's Third New International Dictionary Unabridged defines the word "individual" in several different ways. The definitions range from "as a human being" to "a tournament in contract bridge in which each player changes partners after each round so that one person rather than a pair or team may be determined as winner".

It is the opinion of the Chair that the word "individual" would have to be considered a general term based on the numerous definitions. Therefore, the amendment relates to a general class. The bill relates to a specific subject "Human Beings" as defined in the statutes.

Therefore, it is the opinion of the Chair that in accordance with Senate Rule 50(7) which reads in part as follows: "A substitute or amendment relating to a specific subject or to a general class is not germane to a bill relating to a different specific subject," the amendment is not germane and the point of order raised by the Senator from the 4th is well taken.

FRED A. RISSER
President of the Senate

Germaneness: limiting scope of proposal
Substitute amendment: questions of germaneness
Senate Journal, March 23, 1988, p. 775

On Tuesday, March 22, 1988, the Senator from the 26th, Senator Risser raised the point of order that senate substitute amendment 1 to Senate Bill 351 was not germane.

The chair took the point of order under advisement.

Senate Bill 351 is a comprehensive bill relating to mental health commitment standards and processes, and alternatives thereto. The bill sets standards for commitment, amends current law relating to guardianship and court-ordered protective services, emergency detention, training in emergency procedures, crisis intervention services and coverage of court-ordered services under medical plans.

Senate substitute amendment 1 relates solely to commitment and emergency detention of persons based on specific circumstances. The substitute amendment eliminates many of the provisions of the original bill.

Senate Rule 50(7) reads as follows: "A substitute or amendment relating to a specific subject or to a general class is not germane to a bill relating to a different specific subject, but an amendment limiting the scope of the proposal is germane."

Mason's Manual Section 402(4) reads as follows: An entirely new proposal may be substituted by amendment so long as it is germane to the main purpose of the original proposal.

It is the opinion of the Chair that the main purpose of the original bill was to set standards for commitment. Therefore, in accordance with Senate Rule 50(7) and Mason's Manual Section 402(4), the amendment is germane, and the point of order is not well taken.

Extraordinary session: conduct of
Senate Journal, April 20, 1988, p. 828

Senator Feingold moved that Assembly Joint Resolution 117 be withdrawn from committee

on Aging, Banking, Commercial Credit and Taxation and be referred to committee on Senate Rules.

Senator Davis raised the point of order that Assembly Joint Resolution 117 cannot be before the Senate since it is not part of the call of the Extraordinary Session. [. . .]

[. . .] The Chair [Pres. Risser] ruled the point of order not well taken.

Motions: proper time for making
Withdrawal motion: from committee
Senate Journal, May 19, 1988, special session, p. 889

The Senator from the 21st, Senator Strohl, raised the point of order that the motion made by the Senator from the 29th, Senator Chilsen, to withdraw a bill was not proper under the 4th Order of Business.

On page 1708, Journal of the Senate 1977 Session the Chair ruled that motions to withdraw from committee are restricted to the 8th Order of Business: Motions may be offered. The 8th order at that time is now the 14th Order of Business. It is the opinion of the Chair that motion may be only under the 14th Order of Business. Therefore the point of order is well taken.

A subsequent point of order was raised that a motion to withdraw a bill under the 10th order of business is not proper. The Senator from the 29th also questioned the purpose of the 10th Order of Business: Consideration of Motions and Resolutions.

The Historic Parliamentary purpose of an order of business such as the Senates 10th Order was to have a proper location to list pending motions for consideration as well as Resolutions. The Senate has frequently scheduled resolutions for 10th Order. However, it has not used the 10th Order for consideration of motions. Normal Parliamentary Practice would be for a motion to be made on the 14th Order and that motion would be considered on the next day's calendar under the 10th Order of Business.

However, the practice of the Senate has been to consider motions when they are presented under the 14th Order, hence the use of the 10th Order to consider motions has not been necessary.

For the reasons stated in the previous point on this same question, The Point of Order is well taken.

Senator Fred A. Risser
President of the Senate

1989

Debate: conduct during
Local or private law bills (single subject rule)
Senate Journal, April 25, 1989, p. 188

Earlier today the senator from the 28th, Senator Adelman, raised the point of order that Senate Bill 65 was not properly before the senate because it is a local law relating to the 33rd senate district which is vacant at this time and that Senate Rules 7 and 8. Order and decorum, required the district to be represented. The Chair took the point of order under advisement. The Chair has closely reviewed Senate Rules 7 and 8 and finds no language that requires a senate district to be represented when issues relating to that district are being considered for action by the senate. Therefore, it is the opinion of the Chair that the point of order is not well taken.

Fred A. Risser
President of the Senate

Debate: conduct during
Senate Journal, April 25, 1989, p. 189

Senator Lee raised the point of order that if a Senator leaves his desk or sits down he is yielding the floor.

The Chair [Pres. Risser] ruled the point well taken.

Retirement benefits bill: 3/4 vote on passage
Senate Journal, September 27, 1989, pp. 403–404

On April 26, 1989, the Senator from the 20th, Senator Stitt, raised the point of order that in accordance with Article IV, Section 26, of the Wisconsin State Constitution, Senate Bill 148 required a three-fourths majority of all members elected (25) to pass. The President of the Senate, Senator Fred A. Risser ruled that the point of order was not well taken. The Senator from the 20th with unanimous consent requested that the President publish a written decision in the Journal.

The Senator from the 20th raised 3 points:

1. 500 million dollars is transferred from the transaction amortization account which is to be credited to the employer, employe and annuity accounts on a proportional basis. This transfer is to take place on the last day of the first full month after the effective of this act.

2. The amount of the above noted transfer to be credited to the Fixed Annuity Reserve is 34.6% of the 500 million or 173 million dollars. The Senator from the 20th indicated that this transfer would not take place if this bill was not enacted into law.

3. The amount noted in item #2, the 173 million dollars would be distributed as dividends to current annuitants in 1990 without further action by any governing body.

The Chair refers the membership to two earlier rulings on this subject, the first appears in the Journal of the Senate dated June 18, 1987 on pages 241 and 242. At that time a similar point was raised by the Senator from the 11th, Senator Davis in relation to the effective date of a transfer of funds. The Chair ruled that the effective date of the transfer of funds does not have an impact on the benefits of current annuitants, that logic prevails in this situation and therefore the point raised by the Senator in item #1 does not give reason to invoke the provisions of Article IV, Section 26 of the Constitution.

On October 21, 1987, Journal of the Senate Page 422 is published a written ruling of the Chair in which Senator from the 19th, Senator Ellis raised a point of order that AB 462 in accordance with Section 26, Article IV of the Constitution required a three-fourths majority vote for concurrence.

Points were raised in this case that are similar to those raised by the Senator from the 20th in items #2 and #3 above. Although the amounts are different, the issues involved in the transfer of funds are the same. As stated in this ruling, the Chair points out that these changes alone do not provide for an increase in benefits to current annuitants, although current law provides a vehicle for dividends to be paid to current annuitants. Without the current language in the statutes no dividend would be paid. Senate Bill 148 does not amend the current language providing for dividends to bae [be] paid to current annuitants.

The Chair is of the opinion that Senate Bill 148 in and of itself does not increase benefits for current annuitants or participants of the retirement fund who are no longer employed. Therefore, the Chair rules the point of order not well taken.

FRED A. RISSER
President

Germaneness: nature or purpose of proposal
Special session: proposal or amendment not germane to the call
Substitute amendment: questions of germaneness
Senate Journal, December 21, 1989, special session, p. 589

Senator Davis raised a point of order that senate substitute amendment 2 as introduced and as amended was non-germane.

The amendments to senate substitute amendment 2 which have been adopted are senate amendments 1 and 2. Senate amendment 1 clarifies current law to insure the immunization program applies to Milwaukee School systems. Senate amendment 2 has changed an effective date.

Senate substitute amendment 2 amends an appropriation as does the original bill. It is true as the Senator Davis indicates the original relating clause did not contain that cite however, in the body of 1989 October Special Session Senate Bill 13 the same section of the statutes is enumerated. I point this out only to remind the body that the President cannot rely on a title of a bill to determine the subject. Also, I might point out that the analysis of the original bill discusses responsibilities of governing bodies and various schools as they relate to immunization. Mason's Manual Sec. 402(2) states:

To determine whether an amendment is germane, the question to be answered is whether the question is relevant, appropriate, and in a natural and logical sequence to the subject matter of the original proposal.

The Chair is of the opinion that 1989 October Special Session Senate Bill 13 as originally drafted provides increased funding for the immunization program for school age children senate substitute amendment 2 as amended stays within this scope. Therefore it is the opinion of the Chair the amendment is germane and the Point of Order is not well taken.

FRED A. RISSER
President

Germaneness: individual proposition (one amending another)
Senate Journal, February 27, 1990, p. 740

On Tuesday, February 20, 1990, Senator Czarnezki raised the point of order that Senate Amendment 1 to Assembly Bill 218 was not germane. Before the Chair had an opportunity to rule, by unanimous consent, the bill was referred to the Senate Rules committee. It is the opinion of the Chair that the point of order is still pending the Chair is prepared to rule.

Senate Amendment 1 as introduced by Senator Adelman, would insert language into the bill which would prohibit application of the provisions of the bill in any case that would restrict a student's right to freedom of expression, and the board may not discipline a student for exercising that right, regardless of the demeaning nature of the expression or the environment that the expression may create.

Senate Rule 52 reads in part as follows: "No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment". Also, Mason's Manual, section 402(2) states: "To determine whether an amendment is germane, the question to be answered is whether the question is relevant, appropriate, and in a natural and logical sequence to the subject matter of the original proposal".

The Chair is of the opinion that the proposed language to be inserted brings forth a major philosophical question which ought to be debated as a separate issue from that currently under discussion. In today's society, the manner in which individuals express themselves is often used by others as a factor in determining whether the expression (words or symbolic gestures) are discriminatory or promote discrimination. This has caused a debate to flare regarding the provisions of Amendment 1 to the U.S. Constitution relating to "freedom of speech" and applicability of discrimination laws. It is not the purpose of Assembly Bill 218 to decide this issue.

Therefore, it is the opinion of the Chair that Senate Amendment 1 does not meet the tests of germaneness as stated in Senate Rule 52 and Mason's Manual section 402(2) and that the point of order raised by Senator Czarnezki is well taken. Senate Amendment 1 to Assembly Bill 218 is not germane.

Fred A. Risser
President of the Senate

Withdrawal motion: from committee
Senate Journal, March 6, 1990, pp. 770–772

On Tuesday, February 27, 1990, the Senator from the 4th, Senator Ulichny, raised a point of order relating to the applicability of the provisions of Senate Rule 41(a) as it relates to the motion made by the Senator from the 29th, Senator Chilsen, to withdraw Assembly Bill 38 from the Committee on Education, Economic Development, Financial Institutions and Fiscal Policies and be referred to the Committee on Rules after the public hearing scheduled for March 5, 1990. The Chair took the point of order under advisement.

The Senator from the 29th, Senator Chilsen, made the request that the Chair examine the provisions of Senate Rule 41(a) which states, "except that in no case shall a motion to withdraw from committee take effect prior to a committee hearing if such has been scheduled when the motion to withdraw is made during the week in which the bill, resolution or other matter is scheduled for a public hearing". The Senator from the 29th placed particular emphasis on the words "take effect".

An understanding of general parliamentary procedure as it relates to withdrawal of bills is necessary to interpret the provisions of Senate Rule 41(a).

The first reference manual used by the State Senate is Mason's Manual of Legislative Procedure. Section 491 reads as follows: "When a legislative body wishes to give consideration to or act upon a bill or other matter which has been referred to a committee, a motion may be made to withdraw the matter from the committee, or to discharge the committee from further consideration of the matter referred to it". Also, in Section 491(5),

the manual reads: "A motion to discharge a committee or withdraw a bill requires a majority vote, or the action may be taken by unanimous consent".

Jefferson's Manual does not have specific provisions permitting the withdrawing of bills from committee. The House of Representatives has derived its power to withdraw from Section 26d of Jefferson's Manual which provides for the House to order a committee to meet and report back on a bill.

Chapter 18, of Procedure in the House of Representatives, Section 1, The Discharge Rule Generally; Motion to Discharge, sets out current procedures for withdrawal of bills in the Congress. This section provides that a bill may be withdrawn from committee. The process is a lengthy one. A bill must have been in the possession of a committee for 30 legislative days before a motion to discharge may be entered. The motion must be in writing and signed by a majority of the members. The motion may then be called for by any member who had signed the motion, but only after seven (7) days have passed since the entering of the motion. A 20-minute time limit is established for debate.

The Chair also took the opportunity to review provisions of the rules of the State Assembly as they relate to the withdrawal of bills from committee. Assembly Rule 15 governs this process. Paragraph (1) of that rule states: "No proposal may be withdrawn from any committee until 21 calendar days have expired since the proposal was referred to the committee. After the 21-day period, proposals may be withdrawn either by motion or by petition".

Looking at the history of Senate Rule 41(a), one finds that the provisions of this rule were embodied in what was formerly Senate Rule 46. In 1913, Senate Rule 46 was amended to add the the [*sic*] sentence; "A motion to recall or recommit or withdraw shall be in order, but the question shall be divisible". In a note included in the Senate Manual of 1913, it was stated; "The last sentence of this rule was adopted in 1913. Without this provision, these motions would be out of order because the bill could not be acted upon to permit withdrawal or to order reference without possession of the papers. But since the motion does not affect the text in any way, the expediting of business demanded the rule."

In 1971, Senate Resolution 13 was introduced by the Senator from the 14th. In its original form, the resolution would have added the language; "except that in no case shall a motion to recall from committee take effect prior to a committee hearing if such has been scheduled when the motion to recall is made." This leads the Chair to the conclusion that the original resolution was intended to prevent withdrawal of proposals at anytime that future action was scheduled by the committee, both public hearing and executive action and without regard to how far in the future this action was to occur.

An amendment was added at the time the resolution was adopted to insert the language, "during the week in which the bill, resolution or other matter is scheduled for a public

hearing". The insertion of this language is in conflict with the original language in several areas. At first reading it would appear that this additional language was proposed solely for the purpose of establishing a time frame in which committee action must be scheduled. However, the drafters chose the language referring to making the motion within the "week", not just "prior" to, and used the term "public" hearing, not just the generic term committee hearing.

It is clear to the Chair that the Senate, in these two changes, wanted to make it possible for a bill to be withdrawn from a committee, on a majority vote, but that this should not occur during the week of a public hearing on the subject matter.

The Chair is also of the opinion that the State Senate's rule changes to permit the withdrawal of bills and the inclusion of a clause to protect the ability of a committee to conduct a public hearing and conclude its deliberations is proper. It is clear to the Chair that the motion to withdraw is to be utilized in extraordinary situations. The time limits established by the Congress and as more clearly stated in the Rules of the Assembly are an indication of how drastic a move this is and that the body should provide a reasonable amount of time for a committee to conclude its deliberations before a matter is withdrawn.

The Senate through the provisions of Senate Rule 41(a) has provided a vehicle for the majority of the Senate to be heard and demand the withdrawal of a proposal, while attempting to provide a reasonable amount of time for the committee to conclude any action scheduled at the time the motion is entered.

The Chair has read the rule closely and made every effort to interpret its language to be consistent with general parliamentary practice as it relates to this subject. As pointed out by the Senator from the 29th, the words "take effect" are another important factor in understanding this rule. The dictionary defines "take effect" as "to become operative". A motion becomes operative when it prevails. Therefore, the Chair must interpret this language to delay the motion from being acted upon until seven (7) days after the public hearing.

The Chair is going to bring an end to this confusion by using this opportunity to set out a precedent for all future motions made under this rule. The Chair is of the opinion that a motion to withdraw may be made only on the 14th of Order of Business; as has been stated in earlier decisions and is a well established precedence of this body. Secondly, it is the opinion of the Chair that the word "week" refers to any seven (7) day period as previously stated in earlier decisions of the Chair and that the week is seven (7) days in advance of the hearing and seven (7) days following the hearing, regardless of whether or not additional hearings are scheduled. The Chair is of the opinion that the words "in no case shall a

motion to withdraw from committee take effect prior to a committee hearing" mean that a motion may not be operative, therefore may not be debated or voted upon until after the seven (7) day period.

Therefore, it is the opinion of the Chair that a motion to withdraw from committee may be made on any legislative day under the 14th Order of Business. If a public committee hearing is scheduled or has concluded within seven (7) days of the motion being made, the motion will be duly entered and appear on the calendar of the first legislative day to follow the seventh day after the scheduled public hearing, regardless of whether or not additional hearings are scheduled. The motion would appear under the 10th Order of Business, "Consideration of Motions and Resolutions".

This practice, as described, would provide the majority of the Senate with an ability to withdraw proposals from committee that is more liberal than the U.S. Congress, the State Assembly and the majority of other legislative bodies.

As it relates directly to the point of order raised by the Senator from the 4th, the point is well taken and Senate Rule 41 does apply as stated. The Chair is also of the opinion that the motion by the Senator from the 29th is not a proper motion. A motion cannot be made to withdraw a proposal at a future date without suspension of the rules. A motion of this nature would remove the matter from the control of the body. The ability of the Committee to report the bill at an earlier date and the ability of the Senate Rules Committee to schedule the matter would be removed. The Senate could not take floor action on a proposal that was not within its control. A motion of this nature, should it prevail, would place the proposal in a questionable status for that period of time between action on the motion and withdrawal.

It is the opinion of the Chair that the Senator from the 29th could make a motion under the 14th order of business to withdraw Assembly Bill 38 from committee under the provisions of Senate Rule 41(a) as stated in this ruling. If the Senator chose to do so, the Chair would indicate that Assembly Bill 38 is scheduled for a public hearing on Monday March 12, 1990. This hearing is within seven (7) days of the motion being duly made. In accordance with the procedures outlined, the motion to withdraw Assembly Bill 38 from committee would be entered. The motion would appear on the Calendar of the Senate for Tuesday, March 20, under the 10th Order of Business or on a later date if the Senate does not have a session scheduled for that date, and require a majority vote to prevail. If the motion were to prevail at that time, the bill would be referred to the Senate Committee on Rules.

FRED A. RISSER
President of the Senate

Tabling motion

Senate Journal, March 15, 1990, special session, p. 861

On Tuesday, March 13, 1990, the Senator from the 29th, Senator Chilsen, raised the point of order that in accordance with Senate Rule 93 (5), a motion to table a motion to withdraw a bill from committee was out of order.

The Chair took the point of order under advisement.

Senate Rule 93(5) reads as follows: No motion shall be entertained to postpone action to a day or time certain.

The motion to table does postpone action, however, it does not postpone action until a day or time certain. The purpose of the rule is not to postpone 'definitely.' A motion to table or postpone 'indefinitely' is in order.

Therefore, it is the opinion of the Chair that the point of order raised by the Senator from the 29th is not well taken and the motion to table is properly before the Senate.

FRED A. RISSER
President

1991

Germaneness: nature or purpose of proposal

Substitute amendment: questions of germaneness

Senate Journal, May 7, 1991, pp. 232–233

On tuesday, April 30, the Senator form [from] the 28th, Senator Adelman, raised a point of order that Senate Substitute Amendment 2 to Senate Bill 128 was not germane. The Chair took the point of order under advisement.

The original bill as introduced relates to the adoption of ordinances by local units of government relating to drug paraphernalia and marijuana possession.

Senate substitute amendment 2 would amend current state statutes as they relate to drug paraphernalia. It is the opinion of the Chair that Senate Bill 128 relate directly to the *authority* of local units of government as it relates to the adoption of ordinances.

Senate Substitute Amendment 2 is intended to accomplish a different purpose, would require a title essentially different and would totally alter the nature of the original proposal. This is in direct violation of Senate Rule 50.

Therefore, it is the opinion of the Chair that Senate Substitute Amendment 2 is non-germane and that the point of order raised by the Senator from the 28th, Senator Adelman is well taken.

Fred A. Risser
President of the Senate

Fiscal estimate: not required
Senate Journal, February 6, 1992, p. 620

Earlier today the Senator from the 14th, Senator Leean raised a point of order under Joint Rule 41 and 49 (1) requesting the President to determine if AB 388 requires a fiscal estimate. The Chair [Pres. Risser] has reviewed the bill, looked at past precedent for a bill of this subject and reviewed the requirements of Joint Rule 41 and s. 13.093 (2) of the Statutes.

Joint Rule 41 (1) (a) All bills making an appropriation and any bill increasing or decreasing existing appropriations or state or general local government fiscal liability or revenues shall carry a fiscal estimate.

Section 13.093 (2) Reads in part:

(2) Any bill making an appropriation and any bill increasing or decreasing existing appropriations or state or general local government fiscal liability or revenues shall, before any vote is taken thereon by either house of the legislature if the bill is not referred to a standing committee or before any public hearing is held before any standing committee or, if no public hearing is held, before any vote is taken by the committee, incorporate a reliable estimate of the anticipated change in appropriation authority or state or general local government fiscal liability.

A bill similar to this, has been reviewed in the past as to whether or not a bill of this nature requires a fiscal estimate. This very same bill has not been noted as requiring a fiscal estimate.

The Chair has read the bill and it relates to increasing awards in certain wrongful death actions. It does not of itself create a liability for any state or local unit or government. Nor could a "reliable" estimate be determined, as judicial review or action is required and that cannot be predicted.

Therefore, it is the opinion of the Chair, that Assembly Bill 388 does not require a fiscal estimate.

1993

Germaneness: individual proposition (one amending another)
Substitute amendment: questions of germaneness
Senate Journal, October 26, 1993, pp. 517–518

On Thursday, October 21, 1993, the Senator from the 17th, Senator Schultz raised the point of order that Senate Amendment 3 to Senate Bill 391 was non-germane. The Chair took the point of order under advisement.

Senate Bill 391, as introduced, redefines TIF project costs to include environmental remediation. Also, the bill provides for an increase in the total equalized value a municipality may include in the district and extends the time period to incur costs and the time in which these costs are to be paid and finally directs the assessor to take into consideration any impairment to the value of property because of environmental pollution.

Senate Amendment 1, which was adopted, deleted the portions of the bill related to increasing the equalized value and extending of the time limits to incur costs and pay them.

Senate Amendment 3 provides for a planning commission to amend the project plan of a district to allow for the utilization of the tax increments generated by a district to be allocated for the purpose of environmental remediation to another district.

If one looks at the language of the bill to determine the purpose of the bill, it is clear that the original purpose was to allow for a redefinition of TIF Project Costs to include environmental remediation and to expand the life of a district and the amount of indebtedness for environmental remediation. No where in the bill does it speak of tax increments or sharing of costs between districts. This clearly would accomplish a different purpose than originally intended.

Furthermore, with the adoption of Senate Amendment 1, the bill now relates solely to redefining "project costs" to include environmental remediation and to allowing the property assessor to take into consideration any impairment to the value of property because of environmental pollution.

Senate Rule 50(1) reads in part: "nor shall the Senate consider any substitute or amendment which relates to a different subject, is intended to accomplish a different purpose, would require a title essentially different or would totally alter the nature of the original proposal".

Also, Senate Rule 50(7) reads as follows: A substitute or amendment relating to a specific subject or to a general class is not germane to a bill relating to a different specific subject, but an amendment limiting the scope of the proposal is germane.

Section 402(3) of Mason's Manual of Legislative Procedure reads in part as follows: To be germane, the amendment is required only to relate to the same subject.

Senate Amendment 3 brings forward a new subject, the utilization of "tax increments" and moving them from one district to another.

It is therefore the opinion of the Chair that the point of order raised by the Senator from the 17th, Senator Schultz is well taken and the amendment is non-germane.

Brian D. Rude
President of the Senate

Germaneness: limiting scope of proposal
Substitute amendment: questions of germaneness
Senate Journal, October 26, 1993, p. 529

Earlier today the Senator from the 26th raised the point of order that Senate substitute amendment 1 to Senate Bill 358 was not germane.

The Senator from the 26th raised the point that the bill is a limitation and the substitute is a statute of repose.

The bill as originally presented placed a 2 year limitation from the date the party bringing an action discovers or should have reasonably discovered an act or omission, or a total 5 year limitation on bringing an action from the date of the occurrence of the act or omission.

Senate substitute amendment 1 would place a 6 year limitation on when an action may be commenced from the date of the act or omission.

Both the bill and the substitute amendment relate to limiting the time to when an action may be brought, both contain the statute of repose concept or use the date of occurrence to determine the limit.

The substitute does in fact limit the scope by eliminating reference to a limitation based on a period of time from when the fault is discovered. Senate Rule 50 (7) allows for limiting the scope. Therefore, it is the opinion of the Chair that the substitute amendment is germane and the point of order is not well taken.

Brian D. Rude
President of the Senate

1999

Germaneness: expanding scope of the proposal
Senate Journal, November 11, 1999, p. 344

The Chair is prepared to rule on the point of order raised by the Senator Chvala on Tuesday, November 9, that Senate amendment 5 to Senate Bill 277 is not germane. It is the opinion of the Chair that Senate amendment 5 incorporates the language of Senate Bill 178 and clearly expands the purpose of the bill. Therefore, pursuant to Senate Rule 50 the Chair rules that Senate amendment 5 is not germane and the point of order is well taken.

Motions: proper time for making
Suspension of rules
Withdrawal motion: from committee
Senate Journal, February 1, 2000, p. 413

On Tuesday, January 25, 2000, the Senator from the 14th, Senator Welch, moved that the rules be suspended and that Senate Bill 273 be withdrawn from the Committee on Agriculture, Environmental Resources and Campaign Finance Reform and taken up at this time.

The Senator from the 16th raised a point of order that the motion was out of order at this time.

The Chair took the point of order under advisement.

Mason's Manual, Section 282(2) speaks to this circumstance. It reads in part:

"A motion to suspend the rule may be made either under the order of business of motions and resolutions or under the order of business which relates to the matter proposed to be considered under suspension of the rules".

The Senate has established a clear precedent over the past 20 years or more that motions to withdraw a proposal from committee are to be made under the 14th Order of Business, Motions may be offered. One of the most recent written rulings on this was in the 1982 session, when the Senator from the 14th, at that time, Senator Lorge, moved that Senate Bill 493 be withdrawn from committee and taken up immediately. A point of order was raised that the motion was not properly before the Senate. The Chair ruled the point well taken, based on previous rulings the precedent of the Senate was well established that motions to withdraw bills is restricted to the 14th order of business.

It is clear to the Chair, that although the general belief is that a motion to suspend the rules may be made at anytime, that is true only under the order of business which relates to the matter proposed to be considered. Mason's Manual, section 282(1) also states that

a motion to suspend the rules may be made at anytime *when no question is pending*. The motion by the Senator from the 14th, was made while a question relating to Assembly Joint Resolution 48 was pending. Also, the motion related to a Senate Bill. Senate bills are considered under the 11th Order of Business, the Senate was on the 12th Order of Business when the motion was entered.

The precedent of the Senate is very clear, motions related to the withdrawal of proposals from committee are to be made on the 14th Order of Business. The motion offered by the Senator from the 14th was not in compliance with Section 282 of Mason's Manual, now therefore, it is the opinion of the Chair that the point of order raised by the Senator from the 16th, Senator Chvala, is well taken.

2001

Emergency statement (to pass appropriation bill before budget)
Finance: report of proposal by committee of one house
Senate Journal, February 13, 2001, pp. 72–74

Senator Welch raised the point of order that Point of order that the bill requires an Emergency Statement and is not properly before the Senate. [. . .]

The Chair Rules

[. . .] Senate Bill 1 was referred to the Joint Committee on Finance on January 25, 2001. The Senate Co-Chair of the Joint Committee has attempted to schedule a meeting; however, the Assembly Co-Chair has refused to concur with a meeting schedule.

There are two issues involved prior to consideration of Senate Bill 1 by the full Senate:

1. The first is the requirement for an "emergency statement" as required by ss. 16.47(2)

2. The authority of the Senate Committee on Finance to report the proposal to the Senate when the proposal was referred to the Joint Committee on Finance by the Senate.

Section 16.47(2) of the statutes requires that prior to passage of the biennial budget bill, any proposal which impacts state finances by an amount exceeding $10,000 requires an emergency statement before either house of the legislature may take a vote on final passage of the proposal.

The fiscal impact information provided by the Legislative Fiscal Bureau indicates a cost of $16 Million in fiscal year 2001–02 and approximately $106 million in fiscal year 2002–03. Clearly, in accordance with ss 16.47(2), the bill requires an emergency statement.

A brief history of the "emergency statement" requirement is in order at this time. The concept was developed as the result of one of the first Legislative Council Study Committees on the Budgetary Procedure. The Legislative Council by its resolution establishing the subcommittee advised that the subcommittee "consider the feasibility of including all appropriations in a single bill". The report of the subcommittee stated: "Studies bring out an alarming trend of the large number of separately enacted appropriation bills, including the executive budget bill. The last three sessions show 84 bills in the 1943, 85 bills in 1945 and 110 bills in 1947." The subcommittee also stated: "It is often questionable whether or not all the members of the legislature have a clear picture of the financial condition of the state. Nor do they know whether or not the appropriation bills being acted upon fit into a sound pattern for the state's financial welfare."

The subcommittee reviewed a recommendation of a prior committee on the budget, chaired by the late Senator Melvin R. Laird Sr. That recommendation was to employee 5 budget assistants to advise the legislature on fiscal policy. Senator Laird was quoted as saying: "Budgetary systems are concerned with the coordination of public finances into financial plans. It is apparent that with technical assistance given, the budget can be evaluated and considered in a better legislative light."

The Legislative Council Subcommittee recommended the adoption of a proposal that would accomplish the goal of informing the members of the legislature on fiscal matters and provide for speedy and effective consideration of appropriation bills.

Assembly Bill 11 was introduced into the 1949 Legislative Session, relating to a state fiscal policy and appropriation procedures. The bill as originally introduced clearly restricted the legislature's ability to act on appropriation bills. One provision of the proposal read as follows: "No appropriation bill shall be passed by either house until the executive budget bill has passed both houses; except that the governor may recommend the enactment of an emergency executive budget bill which shall continue in effect only until the executive bill becomes effective or until the next succeeding July 1, whichever is later. There was additional language in the bill to provide for the Joint Committee on Finance to report and propose a Joint Resolution on the fiscal condition, and a requirement that appropriation bills provide a source of revenue, this last provision did not become law.

The proposal recommended by the Legislative Council was viewed by the media as; "suggestions which should make future budget requests considerably more honest". (State Journal "Under the Dome" by Sanford Goltz, date unknown)

The legislature recognized the problem with an outright restriction on its ability to pass appropriation bills prior to passage of the budget bill. Early in the 1951 session the 1949 law was modified to remove the outright restriction on the passage of appropriation bills prior to the budget bill and allow for the passage of any appropriation bill that was recommended for passage by the Joint Committee on Finance. There was no requirement of an emergency

statement until 1957 when the language was amended to provide for the "emergency statement" procedure, as we know it today.

Therefore, of the original purposes outlined by the Legislative Council for restricting the consideration of appropriation bills prior to the passage of the budget, only the education of members and the heightened awareness of the fiscal impact survived. The first law enacted was an outright prohibition on the consideration of such bills prior to passage of the budget. This was repealed after only one session. The language in force today clearly is to heighten the awareness of the membership and the public that the proposal has a definite fiscal impact that may not be part of the biennial budget bill.

The authority of the Assembly to act without an emergency statement arose in a point of order raised in 1995 on Assembly 73, in which the question was raised as to the authority of the Assembly to withdraw a proposal from the Joint Committee on Finance when an emergency statement was required. The motion was to suspend the rules to withdraw AB 73 and take it up immediately. The Speaker, Representative Prosser, ruled that since the motion was to suspend the rules, the motion was valid. This clearly demonstrates that Speaker Prosser believed that one house of the legislature could act on a proposal requiring an emergency statement by suspending the rules, therefore giving credence to the authority of each house to determine its own rules of procedure.

I have found numerous occasions where a proposal has been passed by one house or the other without the required emergency statement.

The failure of the legislature to follow the procedures outlined in ss 16.47(2) does not invalidate the act. I will not quote from the various case history and parliamentary manuals on this subject as I believe it is widely understood that the Constitution grants the authority to each house of the legislature to determine its own rules of procedure and that the legislature may not bind or restrict itself or its successors as to the procedure to be followed in the passage of legislation.

The statutes are silent as it relates to the authority of the Senate Finance Committee to issue an emergency statement.

To determine what authority the Senate Finance Committee has relating to emergency statements, one needs to understand the purpose of the statements. Clearly, since 1957, when the concept of the emergency statement was placed in our statutes, its sole purpose was to make certain that the members of the legislature and the public were aware that a proposal was going to have significant impact on state finances. The law does not require any other special action to be taken other than to provide notice to an "emergency". From the history of this section of the statutes, it appears that the term "emergency" was taken from the original bill of 1949, which gave authority to the Governor to propose an "emergency" executive budget bill. There is no definition as to what constitutes an

"emergency". The 1951 act only gave an exemption to the prohibition on the passage of appropriation bills, if the Joint Committee on Finance recommended the bills for passage.

The history of the Senate Committee on Finance indicates that under Senate Rule 20(4)(b), the Senate Committee on Finance has the authority to report any proposal to the Senate that the Joint Committee fails to.

The Senate Finance Committee has on occasion taken action to report proposals to the Senate. It is well established that the Senate Finance Committee has the authority to act when the Joint Committee on Finance fails to do so, for whatever reason.

On October 17, 1973, Senator Hollander raised the point of order that the Senate Finance Committee has full control over Senate proposals. The Chair ruled that the Senate Committee on Finance has full jurisdiction over bills and joint resolutions under the control of the Senate, which are referred to the Joint Committee on Finance. The Chair furthers stated: "To rule otherwise would allow the Assembly members of the Joint Committee on Finance to control the independent operation of the Senate and would violate the basic concept of bicameralism".

This Presiding Officer, while serving as Minority Leader of this Senate, raised a point of order on October 25, 1973, questioning the authority of the Senate Finance Committee to report a proposal to the Senate that had been referred to the Joint Committee on Finance.

The Chair ruled the point of order well taken and stated that only the Joint Committee on Finance could have jurisdiction over legislation referred to the Joint Committee. The ruling of the Chair was appealed, and on a vote of 8 ayes and 23 noes, the ruling was not held as the judgement of the Senate. From that time forward, it has been the determination of this Senate that Senate Rule 20(4)(b) grants authority to the Senate Finance Committee to act on proposals referred to the Joint Committee on Finance.

The Senate Rules were amended by 1975 Senate Resolution 21. The resolution had bipartisan authors and a relating clause of "relating to senate committee procedures." The rule change was a direct result of the rulings of the Chair in the previous session.

It should be noted that the Joint Committee on Finance in the early 70's consisted of 9 members of the Assembly and 5 Senators. The split party control and the disproportionate representation of the Senate on the Joint Committee were a major reason for the actions taken by the Senate Finance Committee.

It is interesting to note that in the 75 Session, democrats controlled both houses of the legislature, yet the Senate, with strong bipartisan support, wanted to make it very clear, in the rules, that the Senate Finance Committee had jurisdiction and the authority to report proposals that had been referred to the Joint Committee on Finance, without restriction.

The statutes require no special action other than to include in their report to the house a recommendation that a proposal be passed and that a statement be made to the effect that they are emergency bills. It is clear that the Senate Finance Committee has the authority to report a proposal to the full Senate. The Committee has the same resources available to it as does the Joint Committee to determine the fiscal impact of proposals, and is clearly in a position to fulfill the requirements set forth in ss. 16.47(2).

The intent of the Senate Rule 20(4)(b) is clear in that it was adopted to allow the Senate to take action on any proposal that the Joint Committee on Finance has failed to report. It is also clear to the Chair that it was the intent and purpose of the Senate in the early 70's to grant full authority to act to the Senate Finance Committee. Furthermore, as stated by a previous presiding officer, to not allow the Senate Finance Committee to act would grant the authority to the Assembly Co-Chair, the authority to block the independent operation of the Senate.

In addition, as supported by case history, parliamentary manuals and as demonstrated by the ruling by the Speaker in the Assembly, the Senate has the authority to determine its own rules of procedure, even if they conflict with an existing statute, as long as they don't conflict with the Constitution or infringe on the rights of individual members.

Mason's Manual of Legislative Procedure states in section 3, paragraph 2:

The house and senate may pass an internal operating rule for its own procedure that is in conflict with a statute formerly adopted.

In Section 2, paragraph 3, Mason's also states:

Rules of procedure fulfill another purpose in protecting the rights of members. Individual members, for example, are entitled to receive notices of meetings and the opportunity to attend and participate in the deliberations of the group. Minorities often require protection for unfair treatment on the part of the majority, and even the majority is entitled to protection from obstructive tactics on the part of minorities.

I am reminded of a quote from Cushing's Legislative Assemblies, Elements of the Law and Practice of Legislative Assemblies in the United States of America:

The great purpose of all rules and forms, says Cushing, is to subserve the will of the assembly rather than to restrain it; to facilitate and not to obstruct the expression of its deliberate sense.

Clearly the Senate has the authority, through its adopted rules, to authorize a committee to report a proposal in the same manner prescribed by law for a Joint Committee.

Therefore, it is the opinion of the Chair, that Senate Rule 20(4)(b) grants to the Senate Finance Committee the full authority of the Joint Finance Committee as it relates to the

reporting of proposals referred by the Senate, to include the recommending of passage of a proposal with emergency statement attached.

The Chair rules the point not well taken.

FRED A. RISSER
President of the Senate

2003

Motions: proper time for making
Senate Journal, January 20, 2004, p. 550

On Tuesday, November 11, 2003, on the 11th order of business, the Senator from the 27th moved that the rules be suspended and Senate Bill 240 be made a special order of business at 10:00 AM on the calendar of November 13, 2003.

The Senator from the 20th raised a point of order that the motion was out of order.

The Chair took the point of order under advisement.

The point of order is well taken. The Senate has established a clear precedent that motions concerning business that is not currently before the Senate are made under the 14th order of business.

Germaneness: nature or purpose of proposal
Senate Journal, March 9, 2004, pp. 686–687

Facts

On Thursday, March 4, 2004, Senator Carpenter introduced Senate Amendment 1 to Senate Bill 298. Senator Welch raised a point of order that Senate Amendment 1 was not germane to Senate Bill 298. The Chair took the point of order under advisement.

Ruling of the Chair

Senate Rule 50 (1) requires every amendment to a proposal to be germane to that proposal. Senate Rule 50 (6) (b) states that any amendment to a proposal that relates to a subject that is different from the subject of that proposal or that is intended to accomplish a purpose that is different from the purpose of that proposal is not germane. Senate Bill 298 is remedial legislation relating to the scope of the Code of Ethics for Local Public Officials. Senate Amendment 1 relates to the duration of the sales tax that is financing Miller Park construction costs. It is the opinion of the chair that Senate Amendment 1 relates to a

subject that is different from the subject of Senate Bill 298 and that Senate Amendment 1 is intended to accomplish a purpose that is different from the purpose of Senate Bill 298. As a result, Senate Amendment 1 is not germane to Senate Bill 298.

2005

Adjourn or recess, motion to
Senate Journal, May 12, 2005, p. 219

Senator Risser raised a point of order that the motion offered by Senator Schultz to table the motion to adjourn until 10:00 A.M. on May 31, 2005, made by Senator Miller, was not in order because a motion to adjourn cannot be laid on the table.

The Chair ruled the point of order raised by Senator Risser that the motion by Senator Schultz to table the motion to adjourn until 10:00 A.M. on May 31, 2005, made by Senator Miller, was well taken pursuant to Senate Rule 68. Tabling of the motion to adjourn has no precedental value.

Extraordinary session: conduct of
Senate Journal, July 20, 2005, extraordinary session, pp. 301–302

Senator Risser raised a point of order that the Senate Rules apply to extraordinary sessions and that, pursuant to those rules, Senate Rule 18 requires the production and distribution of a calendar for the extraordinary session.

The Chair ruled the point of order not well taken. Although the Senate Rules generally do apply to extraordinary sessions, the Senate Rules do not require the production of a calendar for a session day. In the absence of a calendar, the Senate may convene and follow the orders of business required under Senate Rule 17. For purposes of this extraordinary session, the committee on Senate Organization called the session but did not prepare a calendar. Thus, the Senate followed the orders of business dictated by Senate Rule 17. Bills taken up during the session may be taken up by unanimous consent.

Referral motion (to committee)
Senate Journal, November 1, 2005, p. 424

Senator Risser raised the point of order that tabling the motion to refer to committee places the proposal in the committee on Senate Organization pursuant to Senate Rule 65 (2).

The Chair ruled the point of order not well taken. Senate Rule 65 (2) applies only to a motion to table a proposal, and a proposal is a defined term. As defined in Senate Rule 99

(60), a proposal does not include a motion. Thus under Senate Rule 63 (1)(f) a motion to table a motion is proper and does not have the effect of placing the matter in the committee on Senate Organization.

Proceedings of other house given full faith and credit in this house
Tax exemptions: report by joint survey committee on
Senate Journal, March 2, 2006, p. 674

On March 2, 2006 the Senator from the 26th raised a point of order that Assembly Bill 21 required referral to the Joint Survey Committee on Tax Exemptions and that, pursuant to Senate Rule 36 (2) (c) and s. 13.52 (6) of the statutes, the Senate is prohibited from giving the bill a second reading absent a report from this joint committee.

The Chair took this point of order under advisement pursuant to Senate Rule 7(3). The Chair now issues this written decision on the point of order.

The point of order is not well taken. It has long been the understanding of the Senate that both houses of the Legislature have exclusive authority under the State Constitution to govern their own proceedings. This grant of authority broadly covers all aspects of Senate operations, including the necessity to make referrals pursuant to s.13.52(6) of the statutes.

It is the opinion of the Chair that Assembly Bill 21 is not required to be referred to this Joint Survey Committee. The general practice in the Senate has been to refer only bills that create tax exemptions to this committee. Arguably, this practice is at odds with the language of s.13.52(6) of the statutes and contradicts the recommendation of the Legislative Reference Bureau. The Chair notes, though, that Mason's Manual, which is the adopted parliamentary authority on the Senate, states that the accepted practice of the body has a higher precedence than statutes which attempt to govern legislative proceedings. As a result of the Senate's accepted practice and these provisions of Mason's Manual, Assembly Bill 21 does not require referral to this Joint Committee because this bill does not create a tax exemption.

Furthermore, the Assembly passed this bill without receiving a report from this committee. Out of respect for the Assembly's constitutional authority to govern its own proceedings, the Chair is not inclined to second-guess the other house.

Germaneness: same purpose accomplished in different manner
Senate Journal, April 25, 2006, extraordinary session, p. 791

On April 25, 2006, Senator Kanavas raised a point of order that Senate Amendment 1 to Senate Substitute Amendment 3 to Senate Bill 483 is not germane and, therefore, is not in

order under Senate Rule 50. The Chair took the point of order under advisement.

The ruling of the Chair is that Senate Amendment 1 is germane.

Amendment 1 is relevant to the subject matter of the original proposal because it directly relates to investment in broadband internet services. The amendment allows for cooperatives, like telecommunications companies, the opportunity to help provide and increase the use of broadband internet services.

The amendment does not substantially expand the scope of the proposal because the amendment allows for cooperatives, as well as telecommunications companies, to expand the availability of broadband internet service throughout the state, which is the purpose of Senate Bill 483.

As a result, the amendment is germane under Senate Rule 50. Therefore, the Chair rules the point of order not well taken.

2011

Point of order: consideration of criminal bills
Senate Journal, May 11, 2011, p. 271

Senator Taylor raised the point of order that the bill was not properly before the Senate under Joint Rule 52 and s. 13.525 Wisconsin Statutes. [. . .]

[. . .] The Chair responded to the point of order citing the bill was not properly before the Senate, due to Joint Rule 52 and Wisconsin Statute 13.525. The Chair noted that this point of order deals with the rules that govern the proceedings of the Senate. Joint Rule 52 establishes the rules that govern proceedings, as well as Article IV Section VIII of the Wisconsin Constitution, which grants each house of the legislature sole authority to govern its own proceedings. The Chair is exercising authority delegated to him and the Senate, by the people of Wisconsin, as reflected in the Constitution. After reviewing Joint Rule 52, the Chair finds nothing in the language that requires the notification that was questioned when the point of order was raised. Under Wisconsin Statute 13.525, the activities of the joint review committee on Criminal Penalties are triggered by the Chairperson of the standing committee to which the criminal penalty bill was referred, and under the statute (5), the Chairperson of the standing committee may request that the Joint Review Committee prepare a report. The language of the statute is permissive, but not mandatory. The Chairman of the standing committee chose not to request a report, and the statute permits the committees in both houses to move forward with the legislation. Upon reviewing the argument on the two points that were raised, the Chair ruled the point of order not well taken.

Motions: proper time for making
Suspension of rules
Withdrawal motion: from committee
Senate Journal, November 2, 2011, pp. 571–572

Senator S. Fitzgerald raised the point of order that the motion to withdraw a bill from committee must be made under the 14th order of business.

Senator Erpenbach asked unanimous consent that the rules be suspended and that Senate Bill 232 be withdrawn from the committee on Public Health, Human Services, and Revenue and taken up at this time.

Senator Fitzgerald objected.

Senator Erpenbach moved that the rules be suspended and that Senate Bill 232 be withdrawn from the committee on Public Health, Human Services, and Revenue and taken up at this time.

The Chair ruled the point of order well taken, citing a ruling of the Chair from January 25, 2000.

Debate: questions that are not debatable
Senate Journal, November 2, 2011, p. 575

Senator Miller raised the point of order that the motion that Senate Bill 232 be withdrawn from the committee on Public Health, Human Services, and Revenue and taken up is debatable.

The Chair ruled the point of order not well taken, because a motion to withdraw from committee and take up immediately requires a suspension of the rules and is therefore not debatable, pursuant to Senate Rule 68.

Privileged resolution
Rules: adoption or amendment of
Senate Journal, January 17, 2012, p. 656

President Ellis ruled on the point of order that was raised on November 3, 2011 by Senator Miller, questioning the status of Senate Resolution 22.

"On November 3, 2011, the Senator from the 16th, Senator Miller, raised a point of order questioning the status of Senate Resolution 22 as a privileged resolution. The Chair took the question under advisement. The Chair is now prepared to rule.

Senate Rule 69 states that a privileged resolution "need not lie over for consideration, but

may be taken up immediately unless referred to the calendar or committee." However, Senate Rule 90 specifically governs the procedure for changing the Senate Rules stating: "after the senate rules have been established at the commencement of the biennial session, any resolution to change the senate rules must lay over one week." These rules appear to conflict, with one saying that a privileged resolution need not lie over and the other saying that a change to the rules must lie over. It is the Chair's opinion, though, that when a privileged change to the rules is involved, the key to harmonizing Senate Rule 69 and Senate Rule 90 is the phrase "unless referred to the calendar."

The Chair hereby rules that, pursuant to these two rules, a privileged resolution that changes the Senate Rules must be placed under the 10th Order of business on the first calendar established at least one week after introduction of the resolution.

More than one week has passed since the introduction of Senate Resolution 22. Thus, under the terms of this ruling, Senate Resolution 22 shall be placed on the next established calendar. The resolution shall be placed under the 10th Order of Business, consideration of motions, resolutions, and joint resolutions not requiring a 3rd reading.

The Chief Clerk shall spread this ruling upon the journal."

2013

Separation of powers
Senate Journal, November 5, 2013, p. 459

State of Wisconsin
Office of Senator Tim Carpenter
November 5, 2013

The Honorable, the Senate,

During the floor session on Tuesday, November 5, 2013, I asked for a point of order as to the Senate President's interpretation of when the Senate is in session, for purposes regarding immunity from civil process. I withdrew my point of order at your invitation to submit to you the question more specifically, in writing.

As you are aware, a member of the Senate, the Senator from the Fifth Senate District, is reported to be claiming legislative immunity from a 2013 lawsuit which has alleged that she failed to turn over records pursuant to an open records request. As you are also no doubt aware, it has been reported that in a motion filed by state Attorney General J.B. Van Hollen's office, the Senator from the Fifth claims she can't be sued while the legislature is in session.

The Wisconsin State Constitution, Article IV Section 15 states as follows:

"SECTION 15. Members of the legislature shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest; nor shall they be subject to any civil process, during the session of the legislature, nor for fifteen days next before the commencement and after the termination of each session."

It is further reported that the senator in question contends in her motion before the court that the current legislative session lasts the entire term of a state senator. You can see that this can be interpreted to mean that legislators could be "in session" from the moment they are first sworn in until they leave office.

In contrast, it could also be argued that the Constitution confers immunity from civil proceedings only during floor sessions.

I would like to ask you to provide your opinion as to when the Senate of the State of Wisconsin is in session such that senators would be immune from civil process under Article IV Section 15 of the Wisconsin State Constitution.

This question is asked so that the senators may be guided by you in their actions to be compliant with the Constitution, Wisconsin State Statutes, and the Rules governing the Senate.

I am looking forward to hearing your response.

Sincerely,
TIM CARPENTER
State Senator

[No response is recorded in the journals.]

2019

Debate: conduct during
Senate Journal, November 5, 2019, pp. 480–481

[Point of order raised during the debate on confirmation of Brad Pfaff as Secretary of the Department of Agriculture, Trade and Consumer Protection]

Senator Carpenter raised the point of order that the Chair should allow the Senator from the 31st to read a transcribed quote from a committee hearing regarding remarks made by another Senator that were not included in the committee record.

The Chair ruled that reference to what was spoken by senators at a committee meeting on a matter before the senate was not permitted during floor debate on that matter pursuant to Senate Rule 56. The Chair held that reference to words spoken by senators in committee during floor debate was out of order.

Senate Rule 56 provides, in part, that "members who are about to speak in debate or deliver any matter to the senate shall rise in their places and respectfully address the presiding officer, and, upon being recognized, shall proceed, *confining themselves to the question under debate and avoiding personalities*." (Emphasis added.)

Senate Rule 56 requires that during debate members confine their remarks to the question under debate and to no other matters. This rule does not specifically detail the kinds of matters that may be considered during debate. The rule also requires that members avoid personalities when engaged in debate. This is a general prohibition with little detail. It is a long standing practice of the senate to refer to authoritative sources, such as *Mason's Manual of Legislative Procedure*, for guidance in interpreting and applying the senate rules. In fact, a previous Chair, Senator Risser, referred to *Mason's Manual* as "the first manual used by the State Senate." (See Senate Journal, March 6, 1990, pp. 770-772.)

Mason's Manual, Sec. 101.1, provides generally that "debate must be confined to the question before the body." This is the same language as found in Senate Rule 56. But *Mason's Manual*, Sec. 101.5, further interprets this general provision to include the following restriction: "Members may not allude to nor relate in debate what was done or said in committee or by any member of the committee, except such as is contained in the written report made to the house by authority of the committee." Finally, *Mason's Manual*, Sec. 123.1, affirms that, in debate, "no person may indulge in personalities, impugn motives of members, or use indecent or profane language." Again, similar language is found in Senate Rule 56.

According to *Mason's Manual*, therefore, senators engaged in floor debate may not reference what other senators said during committee deliberations. The only exception involves remarks senators made at committee that are specifically included in the committee report. This rule requires senators to engage in floor debate on the merits of the question before the body at that time and not on words that may have been spoken during committee deliberations. This is particularly the case if a senator's motives are being impugned by reference to what the senator may or may not have said during committee deliberations. The Chair finds this guidance from *Mason's Manual* persuasive. This rule encourages and promotes direct engagement by senators in floor debate on matters before the body, and not on personalities or on what may have been said by a senator at a different time in a different place.

Therefore, it is the opinion of the Chair that the point of order raised by the Senator from the 3rd is not well taken.

Motions: proper time for making
Suspension of rules
Withdrawal motion: from committee
Senate Journal, November 5, 2019, p. 484

Senator Shilling moved that the rules be suspended and that Assembly Bill 119 be withdrawn from the committee on Senate Organization and taken up at this time. [. . .]

[. . .] Senator Fitzgerald raised the point of order that the motion to withdraw a bill from committee is out of order at this time and that motion should be made under the 13th order of business.

The chair ruled the point of order well taken, citing a previous ruling on a motion to withdraw a bill from committee was out of order made by Senator Risser on February 1, 2000, and that the Senate has set a clear precedent that motions to withdraw bills from committee and take up should be made under the 13th order of business.

2021

Timeliness of point of order
Senate Journal, February 18, 2021, special session, p. 133

Senator Carpenter raised the point of order that he was denied the ability to physically attend Senate session on April 15, 2020.

The Chair ruled the point of order not well taken, citing a prior ruling of the Chair and Mason's Manual of Legislative Procedure, which provides that "[a] point of order must be raised before the irregularity or occasion for raising the point of order has passed." [Senate Journal, Feb 976, p. 1779, and Mason's Manual, Sec. 231.1.]

Germaneness: special session call (must not be exceeded)
Special session: proposal or amendment not germane to the call
Senate Journal, February 18, 2021, special session, p. 135

No point of order was raised, but President Kapenga issued the following message regarding the germaneness of a special session bill, as amended:

The Senate met today in a special session convened by Governor Evers in Executive Order #103. In any special session, the governor defines the purpose of the special session, and, during the special session, the Legislature may only act on legislation that is germane to the call. As part of the Governor's call to convene this special session, the Governor restricted the special purpose to include "consider[ing] and act[ing] upon LRB-1312/1 and LRB1430/1, relating to transactions with the Department of Workforce Development under the unemployment insurance law, funding for unemployment insurance modernizations efforts, granting rule-making authority, and making an appropriation." The purpose of this communication is to state my opinion on whether January 2021 Special Session Senate Bill 1 (JR SB 1), as amended by Senate Substitute Amendment 1 (the substitute amendment), is germane to the special session call. For the following reasons, I believe that JR SB 1, as amended, is germane to the special session call.

The Wisconsin Constitution allows the governor to convene the Legislature in special session, "and when so convened no business shall be transacted except as shall be necessary to accomplish the special purposes for which it was convened." [Wis. Const, Art. IV, s. 11.] Similarly, Senate Rule 93 (1) provides that "a proposal or amendment may not be considered unless it accomplishes the special purposes for which the special session was convened."

Upon examination of JR SB 1 and comments made by the Governor in a press release he issued at the time he called for this special session, it is apparent that this special session's purpose, at least in part, is to produce legislation that will alleviate the unemployment claims backlog due to the COVID-19 pandemic. To this end, the substitute amendment requires the Department of Workforce Development to start the process of updating Unemployment Insurance (UI) information technology systems, establishes civil liability protections to certain entities including employers covered under the UI law to encourage them to stay open so their employees are less reliant on the UI system, temporarily suspends the one-week waiting period, continues 2019 WI Act 185's benefit charging relief, temporarily modifies workshare plans, and allows the state to continue receiving federal extended benefits for UI. In short, it is clear that the substitute amendment's contents aim to achieve the same goal as the Governor's call to special session.

Tellingly, no member of the Senate raised a point of order concerning the germaneness of JR SB 1, as amended by Senate Substitute Amendment 1. This is one indicator that there was consensus within the Senate that the bill is germane to the special session. For the sake of clarity, I write to share that had a point of order been raised, I would have determined that JR SB 1, as amended, in whole or in part, is germane to the special session under both the Wisconsin Constitution and the Senate Rules.

Debate: conduct during

Senate Journal, October 25, 2021, p. 572

Senator Carpenter raised the point of order that the Chair should allow Senator Larson to respond to a question about what Senator Larson would have said had the senate granted Senator Larson leave to speak for a third time on the question of passage of Senate Bill 454.

President Kapenga ruled the point of order not well taken. The full text of the ruling by President Kapenga follows:

Senate Rule 59 provides in part that "[m]embers may not speak except from their assigned places, and not more than twice on a question, except on leave of the senate." In this instance, Senator Larson requested unanimous consent to speak for a third time on the question of passage of Senate Bill 454. Senator Kooyenga objected to this request. Senator Carpenter then asked what Senator Larson would have said had the senate granted him leave to speak for a third time.

While the senate has a long tradition of allowing members to ask questions of one another to obtain information during debate, this tradition does not allow a member to evade Senate Rule 59's prohibition against speaking more than twice on the same question without leave of the senate. In certain circumstances, it may be allowable for a member who has already spoken twice on the same question to respond to a narrow request for specific information without leave of the senate. However, if the senate were to allow members to speak broadly an unlimited number of times on the same question through responding to open-ended questions asked by other members it would eviscerate Senate Rule 59's intended purpose of facilitating efficient debate.

Therefore, the Chair rules the point not well taken. ■

Index

D

E

F

G

I

J

L

M

O

P

R

S

T

V

W