Rulings of the Chair

that included explanations

October 2016 – January 1995

with an introduction by Richard A. Champagne

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Introduction

by Richard A. Champagne

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 law not tied to any one locality or time. Parliamentary law transcends national and historical periods. Luther Cushing, the nineteenth century Massachusetts jurist, politician, and scholar, defining 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

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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 edition (Cambridge, MA: Perseus Publishing, 2000), p. XLVIII.

was vice president of the United States for use during his term as president of the United States Senate 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.gpo.gov/fdsys/pkg/HMAN-111/pdf/HMAN-111-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*, 2000 edition, section 43.

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. Even though it could be argued that the general vesting of all legislative power in the assembly and senate under article IV, section 1, of the Wisconsin Constitution, would permit the legislature to govern its internal affairs under general principles of parliamentary law, 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 1995 to 2016, 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. Since 1993, for example, the two political parties have almost evenly split control of the senate, with party control even changing during the course of one legislative session four times. In the assembly, since 1993, the Democrats have been the majority party for four years, while the Republicans have been the majority party for nearly twenty years. From 1993 to 2016, there have been nine different Speakers and twelve different senate majority leaders, some of whom served for more than one period. Legislative member turnover is also surprisingly high. Of the 99 representatives to the assembly who were seated at the start of the 2015 legislative session, only two had served since 1997. Of the 33 senators seated at the start of the 2015 legislative session, only 6 had served since 1997. If you compare membership during a relatively recent period, of the 99 representatives to the assembly who held seats at the start of the 2015 legislative session, only 22 representatives had served since 2007, while of the 33 senators holding office at the start of the 2015 legislative session, only 16 senators had served since 2007 (although two were representatives to the assembly at that time).

The 1995–2016 period, therefore, is one in which there were changing majority parties, different casts of leaders, and different presiding officers in each house. But throughout this period, there was relative continuity in the regulation of legislative procedure.

6. Wisconsin Constitution, Article IV, section 8.

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 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

7. 2009 Assembly Resolution 2.

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 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

8. Legislative officers for the 2015 legislative session are identified in resolutions that organize each house for session. See 2015 Assembly Resolution 1 and 2015 Senate Resolution 1.

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

10. Assembly Rule 3m; Senate Rule 4.

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 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.

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

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

12. *Assembly Journal*, June 14, 2011.

13. Section 16.47 (2), Wisconsin Statutes.

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

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.[15] 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."[16] 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.[17] 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 as they don't conflict with the Constitution or infringe on the rights of individual members."[18] 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

15. *Assembly Journal*, September 25, 2007.

16. *Assembly Journal*, January 15, 1998.

17. Section 13.50 (6), Wisconsin Statutes.

18. *Senate Journal*, February 13, 2001. Also, see *Senate Journal*, March 2, 2006, for a similar ruling as applied to referral of bills to the Joint Survey Committee on Tax Exemptions under section 13.52 (6), Wisconsin Statutes.

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 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 1995–2016 period, are a vital part of Wisconsin's contribution to parliamentary law. That fact alone should command our attention. ■

Preface

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 from January 3, 1995[1], to October 2016.

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

1. January 3, 1995, was the first day of the 1995 legislative session. Rulings from earlier legislative sessions are collected in previous volumes of *Rulings of the Chair*, which can be inspected at the LRB.

Part I

Assembly

2015

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)."

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: limiting scope of proposal
Germaneness: same purpose accomplished in different manner
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)."

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."

2013

Germaneness: same purpose accomplished in different manner
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."

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.

2011

Germaneness: same purpose accomplished in different manner

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".

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."

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."

Germaneness: same purpose accomplished in different manner

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)."

Germaneness: nature or purpose of proposal
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."

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.

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."

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]."

2009

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."

Germaneness: nature or purpose of proposal
Germaneness: expanding scope of the 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."

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."

2007

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."

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

Emergency statement (to pass appropriation bill before budget)
Budget bills
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."

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.

2005

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.

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.

Veto review session: conduct of

Motions: proper time for making

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.

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.

2003

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.

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.

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).

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."

2001

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 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.

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)

Reconsideration motion
Engrossment
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.

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.

Germaneness: same purpose accomplished in different manner
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.

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).

1999

Germaneness: same purpose accomplished in different manner
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."

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.

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."

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."

1997

Germaneness: limiting scope of proposal
Germaneness: particularized detail
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).

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 [*sic*] 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 [*sic*] 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."

Withdrawal motion: from committee
Extraordinary session: conduct of
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.

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.

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.

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.

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.

1995

Delayed calendar: sequence of completion
Interruptions: when authorized
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.

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.

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.

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.

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.

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.

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."

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."

Withdrawal motion: from committee
Suspension of rules
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).

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.

Part II

Senate

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

Note: No response is recorded in the journals.

2011

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."

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.

Motions: proper time for making
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.

Suspension of constitution or state law not permitted
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.

2005

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.

Tax exemptions: report by joint survey committee on
Proceedings of other house given full faith and credit in this house
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.

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.

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.

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.

2003

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.

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.

Emergency statement (to pass appropriation bill before budget)
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

1999

Withdrawal motion: from committee
Motions: proper time for making
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.

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.

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