

No. 19
STATE OF MICHIGAN
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REGULAR SESSION OF 2003

Senate Chamber, Lansing, Thursday, February 27, 2003.

10:00 a.m.

The Senate was called to order by the President, Lieutenant Governor John D. Cherry, Jr.

The roll was called by the Secretary of the Senate, who announced that a quorum was present.

Allen—present
Barcia—present
Basham—present
Bernero—present
Birkholz—present
Bishop—present
Brater—present
Brown—present
Cassis—present
Cherry—present
Clark-Coleman—present
Clarke—present
Cropsey—present

Emerson—present
Garcia—present
George—present
Gilbert—present
Goschka—present
Hammerstrom—present
Hardiman—present
Jacobs—present
Jelinek—present
Johnson—present
Kuipers—present
Leland—excused
McManus—present

Olshove—present
Patterson—present
Prusi—present
Sanborn—present
Schauer—present
Scott—present
Sikkema—present
Stamas—present
Switalski—present
Thomas—present
Toy—present
Van Woerkom—present

Senator Bill Hardiman of the 29th District offered the following invocation:

Father God, we are so thankful to You for Your love and the beautiful sunshine that shines on us outside this physical world. We are also thankful for Your love that shines in our hearts. We give You praise for that. Father, as a nation and as a state, we face tremendous challenges. Father, in this nation we face the possibility of war, and we face a slow economy. Father, I pray for our President. I ask that You would bless him, be with him, guide him, Lord, and cause him to make decisions that are pleasing in Your sight. Bless all of those who are at the federal level, likewise. Father, at the state level, we ask that You bless our Governor. Guide her, give her wisdom and discernment that will cause her to make decisions that are pleasing in Your sight. Not only her, but all of us, Lord God, who serve at this level. Father, I pray for the Senators who serve in this chamber. Give us wisdom and discernment, Lord. Father, even though the way is difficult at times, we look to You for Your blessing. Father, as we draw close to You, as we rest in You, which will cause us to mount up with wings as eagles, even though the ways are tiresome at times, help us to run and not grow weary and to walk and not faint. Father, we ask for Your strength in these times so that we might serve the people of this great state.

We ask for these blessings in the precious name of Jesus Christ. Amen.

The President, Lieutenant Governor Cherry, led the members of the Senate in recital of the *Pledge of Allegiance*.

Motions and Communications

The following communication was received:

Department of Management and Budget

February 12, 2003

I am pleased to present you with a copy of the Annual Report for the Michigan Public School Employees Retirement System, the State Employees Retirement System, the State Police Retirement System and the Judges Retirement System for the fiscal year ending September 30, 2002.

These reports are an excellent source of information on all aspects of the retirement systems. They also provide information on service improvements that were accomplished during the year and detailed information on the strong financial standing of the system.

If I can provide further information, please let me know.

Sincerely,
Mitch Irwin
Director

The communication was referred to the Secretary for record.

The Secretary announced that the Majority Leader has made the appointment of the following Appropriations subcommittee:

Commerce, Labor and Economic Development - Senator Scott as a member.

The subcommittee appointment was approved, a majority of the members serving voting therefor.

The Secretary announced the printing and placement in the members' files on Wednesday, February 26, of:

Senate Bill Nos.	205	206	207	208	209	210	211	212	213					
House Bill Nos.	4263	4264	4265	4266	4267	4268	4269	4270	4271	4272	4273	4274	4275	4276
	4277	4278	4279	4280	4281	4282								

By unanimous consent the Senate proceeded to the order of

Resolutions

Senators Hammerstrom, Van Woerkom, Cropsey, Toy, Thomas, Garcia, Sanborn, Jelinek, Birkholz, Kuipers, Cassis, Schauer, George and McManus offered the following resolution:

Senate Resolution No. 18.

A resolution commemorating March 2003 as Red Cross Month in Michigan.

Whereas, The American Red Cross was founded in 1881 by Clara Barton, a woman selflessly devoted to the needs of humanity; and

Whereas, The Red Cross was chartered and authorized by Congress in 1905 to assist U.S. service personnel and their families and to act in times of need by providing compassionate assistance to people afflicted by personal, local, or national disasters; and

Whereas, The staff of the Red Cross are deployed today with the U.S. military to provide emergency communications and a caring presence to service men and women separated from their families, as well as assistance to the families; and

Whereas, Each year the Red Cross responds to more than 68,000 disasters nationwide, including high profile natural disasters, thousands of single-family fires, and manmade emergencies, such as the brutal terrorist attacks; and

Whereas, The twenty-six Red Cross chapters in Michigan, through the efforts of 56,216 volunteers and 546 paid staff, last year assisted 13,000 individuals affected by disasters, provided health and safety training to over 560,800 individuals, and the two Red Cross Blood Regions drew over 450,000 units of blood, including 43,000 new donors; and

Whereas, In today's new world of terrorism and threats to homeland security, the American Red Cross is urging all Americans to protect themselves through its "Together We Prepare" program, which includes five actions each citizen should take: Make a Plan, Build a Kit, Get Trained, Volunteer, and Give Blood; and

Whereas, Preparation efforts include training school teachers, sports coaches, businesses, and neighborhoods to appropriately respond to first aid and safety concerns; now, therefore, be it

Resolved by the Senate, That we hereby proclaim March 2003 as Red Cross Month in Michigan in appreciation for the assistance the American Red Cross provides to Michigan citizens and all Americans; and be it further

Resolved, That a copy of this resolution be transmitted to the Michigan Chapter of the American Red Cross.

Pending the order that, under rule 3.204, the resolution be referred to the Committee on Government Operations,

Senator Hammerstrom moved that the rule be suspended.

The motion prevailed, a majority of the members serving voting therefor.

The resolution was adopted.

Senator Hammerstrom moved that rule 3.204 be suspended to name the entire membership of the Senate and the Lieutenant Governor as co-sponsors of the resolution.

The motion prevailed, a majority of the members serving voting therefor.

By unanimous consent the Senate proceeded to the order of

Statements

Senators Cropsey, George and Switalski asked and were granted unanimous consent to make statements and moved that the statements be printed in the Journal.

The motion prevailed.

Senator Cropsey's statement is as follows:

I have some quotes from different United States Senators that I think are especially pertinent. Senator Patrick Leahy, Democrat of Vermont and former chairman of the Senate Judiciary Committee stated, "I have stated over and over again that I would object and fight against any filibuster on a judge, whether it is somebody I opposed or supported."

United States Senator Edward Kennedy said, "Senators who believe in fairness will not let a minority of the Senate deny the nominee his vote by the entire Senate."

Senator Barbara Boxer of California in the past has said, "The nominee deserves his day, and filibustering this nomination is keeping him from his day."

During the last several weeks, this body has advised and consented to the ten appointments of Governor Granholm, and we let another appointment take effect without a vote. We in the majority party have often disagreed with the philosophies of these appointees, but we believe that the Governor has the right and duty to make appointments of the people of her choosing. Governor Granholm currently has nine judicial vacancies in Michigan that she can fill. The voters of Michigan supported her in the last election. She has the right to put in people of her choosing. If I, as a chair of the Senate Judiciary Committee, tried to deny her that right because I wanted to, that would not be right, and the newspapers and this body would certainly disagree with us trying to do that. There would be indignation and even anger. The judiciary should not be politicized. But my friends, unfortunately, this is not true in the United States Senate today.

Miguel Estrada was first nominated 21 months ago for the Court of Appeals in Washington, D.C. Mr. Estrada was born in Honduras. He immigrated to the United States when he was only a teenager. A very brilliant man, he graduated magna cum laude from Columbia College and earned a law degree from Harvard, where he was an editor of the *Harvard Law Review*. He went on to work as an assistant United States Attorney in New York and an assistant to the Solicitor General during President Clinton's administration. Currently, he is a partner in a Washington law firm and has argued 15 cases before the United States Supreme Court. His credentials are impeccable. He is legally well-qualified

to be a judge, so much so that the American Bar Association unanimously deemed the nominee well-qualified—its highest rating.

Senator Patrick Leahy, former chairman of the Judiciary Committee, referred to the ABA rating as a gold standard for assessing a prospective jurist. Mr. Estrada's nomination for the Court of Appeals has been endorsed by the Hispanic Bar Association, United States Hispanic Chamber of Commerce, the Latino Coalition, and the League of United Latin American Citizens, which, according to *The Washington Post*, is comparable to the NAACP.

Unfortunately, there are 61 vacancies in the judicial court system, and 31 more are to be open soon. In the Sixth Circuit Court of Appeals alone, which is a circuit that Michigan is in, 6 of 16 seats are vacant. In most of these seats, judicial emergencies have been declared for six remaining judges due to the overwhelming caseload that the remaining jurists face.

There is bipartisan support for Mr. Estrada. There are 51 Republicans reportedly who will vote for him and three Democrats, and another Democrat is quoted as saying he is not sure if he can support him. This filibuster in the U.S. Senate has been going on for two weeks. The last time a judicial nominee has been filibustered was in 1968. The current filibuster by the Democrats in the United States Senate is turning the clock back by 35 years.

Incredibly, it is now the minority party blocking this nomination. This is a dangerous move and, in essence, the minority party in the U.S. Senate has a minority there but is blocking these nominations.

President Clinton said when he was faced with problems because of a vacancy crisis in the federal courts, "It's made worse by Senators who block votes on qualified nominees." I couldn't agree more. I would hope that our two U.S. Senators would allow this nomination to move forward and would allow the other nominations to move forward for the Sixth Circuit Court of Appeals, instead of standing in the way. If they do not like the nomination, that's fine, but do not gum up the process and block the nominations.

Senator George's statement is as follows:

I rise to note two historic events. The first is that today, February 27, is the birthday of an important Michigan figure whose portrait adorns our chamber walls. On this day in 1836, Russell Alexander Alger was born. His figure is to my left. He was born in Ohio, and at age 11, both his parents died of disease within months of each other. An uncle raised him. In adulthood, he worked as a schoolteacher, then studied law, eventually moved to Michigan, and entered the lumber business. When the Civil War came, Russell Alger enlisted in the Michigan Cavalry and had a distinguished war record. He served under General George Armstrong Custer in the Battle of Gettysburg. In a critical maneuver, he helped protect the Union infantry from a Confederate cavalry attack. The Michigan Cavalry met Jeb Stewart's cavalry five miles from Gettysburg and defeated them, thus protecting the Union lines. Alger returned to Michigan and served as Governor from 1885 to 1887.

I also rise to salute the passing of Black History Month and to give tribute to the African American heroes of Michigan's past. In particular, I wish to draw attention to Michigan's Underground Railroad heritage. One such hero was Adam Crosswhite, an escaped slave who with his family fled bondage in the South for freedom in Michigan. Mr. President, he passed through my district through the Underground Railroad. He passed through Schoolcraft and then Battle Creek, and he and his family settled in Marshall, Michigan. Unfortunately, the Crosswhites were discovered by their former owners, and a posse from Kentucky set about to recapture them. An alarm was sounded and the citizens of Marshall turned out. When they saw what was happening, Marshall's residents threw the Kentuckians in jail for disturbing the peace. The Crosswhites were able to escape to Canada.

Adam Crosswhite, along with Henry Bibb and Sojourner Truth, are some examples of African American heroes of the Underground Railroad, whose names we actually know. Unfortunately, by virtue of the very nature of the Underground Railroad which had to be secret, we do not know the names of the 50,000 African American heroes of the Underground Railroad, those individuals who risked all for freedom.

The Underground Railroad is a good example to us today of how Blacks and Whites can work together to achieve a common goal. This history is our common inheritance.

I rise to salute Governor Alger's birthday. He fought bravely for the Union. I rise to salute the White heroes of the Underground Railroad and the Black heroes whose names we know. But mostly, Mr. President, I rise to salute the 50,000 anonymous heroes of the Underground Railroad, whose names we will never know, who in individual and unsurpassed acts of bravery, risked all in throwing off the shackles of slavery to achieve the most precious goal—freedom. I salute Black History Month.

Senator Switalski's statement is as follows:

I appreciate those remarks from my colleague on the great Governor Alger. I would likewise pay tribute to another great Michiganiaan. He is in the chamber today and will be celebrating his birthday this Sunday. I speak, of course, of the great and generous Senator Hansen Clarke. He has also at his own expense provided a sumptuous feast in the lobby for all the Senators and staff to partake in. I hope the Senate will pay him fitting tribute today.

By unanimous consent the Senate returned to the order of

Introduction and Referral of Bills

Senators McManus, Garcia, Cropsey, Allen, Jelinek and Jacobs introduced

Senate Joint Resolution B, entitled

A joint resolution proposing an amendment to the state constitution of 1963, by amending section 8 of article IV, to provide for temporary replacement members of the legislature if a member is called to active military service.

The joint resolution was read a first and second time by title and referred to the Committee on Local, Urban and State Affairs.

Senator Goschka introduced

Senate Bill No. 224, entitled

A bill to designate the fourth Friday in April of each year as children's memorial day in the state of Michigan.

The bill was read a first and second time by title and referred to the Committee on Local, Urban and State Affairs.

Senator Thomas introduced

Senate Bill No. 225, entitled

A bill to amend 1976 PA 451, entitled "The revised school code," by amending sections 1153 and 1155 (MCL 380.1153 and 380.1155), as amended by 1995 PA 289, and by adding sections 1154, 1156, and 1158.

The bill was read a first and second time by title and referred to the Committee on Education.

Senators Hammerstrom, Birkholz, Sanborn, Jacobs, Goschka, Cropsey and Sikkema introduced

Senate Bill No. 226, entitled

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 45901, 45906, 45908, 48701, 48735, and 48738 (MCL 324.45901, 324.45906, 324.45908, 324.48701, 324.48735, and 324.48738), sections 45901, 45906, 45908, 48735, and 48738 as added by 1995 PA 57 and section 48701 as amended by 2002 PA 434, and by adding part 413.

The bill was read a first and second time by title and referred to the Committee on Natural Resources and Environmental Affairs.

Senators Hammerstrom, Birkholz, Sanborn, Jacobs, Goschka, Cropsey and Sikkema introduced

Senate Bill No. 227, entitled

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending section 13e of chapter XVII (MCL 777.13e), as added by 2002 PA 30.

The bill was read a first and second time by title and referred to the Committee on Natural Resources and Environmental Affairs.

Senators Sanborn, Hammerstrom, Birkholz, Jacobs, Goschka, Cropsey and Sikkema introduced

Senate Bill No. 228, entitled

A bill to amend 1988 PA 466, entitled "Animal industry act," by amending sections 4, 6, 12, and 31 (MCL 287.704, 287.706, 287.712, and 287.731), sections 4, 6, and 12 as amended by 2002 PA 458 and section 31 as amended by 2000 PA 323.

The bill was read a first and second time by title and referred to the Committee on Natural Resources and Environmental Affairs.

Senators Birkholz, Hammerstrom, Sanborn, Jacobs, Goschka, Cropsey and Sikkema introduced

Senate Bill No. 229, entitled

A bill to amend 1996 PA 199, entitled "Michigan aquaculture development act," by amending sections 2 and 4 (MCL 286.872 and 286.874).

The bill was read a first and second time by title and referred to the Committee on Natural Resources and Environmental Affairs.

Senators Bernero, Goschka, Olshove, Toy, George, Clark-Coleman, Hardiman, Scott, Jacobs and Switalski introduced

Senate Bill No. 230, entitled

A bill to amend 1917 PA 167, entitled "Housing law of Michigan," by amending section 134 (MCL 125.534).

The bill was read a first and second time by title and referred to the Committee on Local, Urban and State Affairs.

Senator Hammerstrom introduced

Senate Bill No. 231, entitled

A bill to amend 1974 PA 258, entitled "Mental health code," by amending section 742 (MCL 330.1742), as amended by 1996 PA 588.

The bill was read a first and second time by title and referred to the Committee on Health Policy.

Senators Johnson and Hammerstrom introduced

Senate Bill No. 232, entitled

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," (MCL 760.1 to 777.69) by adding section 27b to chapter VIII.

The bill was read a first and second time by title and referred to the Committee on Judiciary.

Senators Hammerstrom and Johnson introduced

Senate Bill No. 233, entitled

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," (MCL 760.1 to 777.69) by adding sections 27a and 27b to chapter VIII.

The bill was read a first and second time by title and referred to the Committee on Judiciary.

Senators Hammerstrom, Jacobs, Cherry, Patterson, Allen and Goschka introduced

Senate Bill No. 234, entitled

A bill to amend 1980 PA 350, entitled "The nonprofit health care corporation reform act," by amending sections 107, 201, 204, 206, 207, 211, 401, 502, 602, 608, 609, 610, 611, 612, 613, and 614 (MCL 550.1107, 550.1201, 550.1204, 550.1206, 550.1207, 550.1211, 550.1401, 550.1502, 550.1602, 550.1608, 550.1609, 550.1610, 550.1611, 550.1612, 550.1613, and 550.1614), section 207 as amended by 1999 PA 210, section 211 as amended by 1993 PA 127, section 401 as amended by 2000 PA 26, section 502 as amended by 1998 PA 446, section 608 as amended by 1991 PA 73, and section 609 as amended by 1991 PA 61, and by adding sections 204a, 205a, 422c, 608a, 608b, 608c, 608d, and 620; and to repeal acts and parts of acts.

The bill was read a first and second time by title and referred to the Committee on Health Policy.

Senators Patterson, Jacobs, Cherry, Hammerstrom and Goschka introduced

Senate Bill No. 235, entitled

A bill to provide for certain premium rates and standards for certain health benefit plans; to provide for certain coverage provisions; and to provide for certain disclosures.

The bill was read a first and second time by title and referred to the Committee on Health Policy.

Senators Hammerstrom, Jacobs, Cherry, Patterson, Allen and Goschka introduced

Senate Bill No. 236, entitled

A bill to amend 1980 PA 350, entitled "The nonprofit health care corporation reform act," (MCL 550.1101 to 550.1704) by adding sections 422a and 422b.

The bill was read a first and second time by title and referred to the Committee on Health Policy.

Senators Stamas, Jacobs, Cherry, Patterson, Hammerstrom, Allen and Goschka introduced

Senate Bill No. 237, entitled

A bill to amend 1980 PA 350, entitled "The nonprofit health care corporation reform act," (MCL 550.1101 to 550.1704) by adding section 401i.

The bill was read a first and second time by title and referred to the Committee on Health Policy.

Senators Jacobs, Cherry, Patterson, Hammerstrom and Goschka introduced

Senate Bill No. 238, entitled

A bill to amend 1980 PA 350, entitled "The nonprofit health care corporation reform act," by amending section 501 (MCL 550.1501).

The bill was read a first and second time by title and referred to the Committee on Health Policy.

Senators George, Garcia, Bernero, Schauer, Goschka, Allen and Clarke introduced

Senate Bill No. 239, entitled

A bill to amend 1851 PA 156, entitled "An act to define the powers and duties of the county boards of commissioners of the several counties, and to confer upon them certain local, administrative and legislative powers; and to prescribe penalties for the violation of the provisions of this act," by amending section 11 (MCL 46.11), as amended by 1998 PA 97.

The bill was read a first and second time by title and referred to the Committee on Local, Urban and State Affairs.

Senators George, Garcia, Bernero, Schauer, Goschka, Allen and Clarke introduced

Senate Bill No. 240, entitled

A bill to amend 1913 PA 380, entitled "An act to regulate gifts of real and personal property to cities, villages, townships, and counties, and the use of the those gifts; and to validate all such gifts made before the enactment of this act," by amending the title and section 2 (MCL 123.872), the title as amended and section 2 as added by 1985 PA 9.

The bill was read a first and second time by title and referred to the Committee on Local, Urban and State Affairs.

Senators George, Jacobs, Bernero, Hardiman, Schauer, Goschka, Cropsey, Allen and Clarke introduced

Senate Bill No. 241, entitled

A bill to amend 2001 PA 142, entitled "Michigan memorial highway act," (MCL 250.1001 to 250.1100) by adding section 1067.

The bill was read a first and second time by title and referred to the Committee on Transportation.

Senators Schauer, Thomas, Goschka, George, Clark-Coleman, Hardiman, Scott, Jacobs and Clarke introduced

Senate Bill No. 242, entitled

A bill to amend 1949 PA 300, entitled "Michigan vehicle code," (MCL 257.1 to 257.923) by adding section 217i.

The bill was read a first and second time by title and referred to the Committee on Transportation.

Senators Thomas, Schauer, Goschka, George, Clark-Coleman, Hardiman, Scott and Clarke introduced

Senate Bill No. 243, entitled

A bill to amend 1949 PA 300, entitled "Michigan vehicle code," (MCL 257.1 to 257.923) by adding section 217j.

The bill was read a first and second time by title and referred to the Committee on Transportation.

Committee Reports

COMMITTEE ATTENDANCE REPORT

The Subcommittee on State Police and Military Affairs submitted the following:

Meeting held on Tuesday, February 25, 2003, at 1:00 p.m., Room 405, Capitol Building

Present: Senators Brown (C) and Clarke

Excused: Senator Stamas

COMMITTEE ATTENDANCE REPORT

The Subcommittee on Transportation submitted the following:

Meeting held on Tuesday, February 25, 2003, at 2:00 p.m., Senate Appropriations Room, 3rd Floor, Capitol Building

Present: Senators Johnson (C), Stamas and Barcia

COMMITTEE ATTENDANCE REPORT

The Committee on Finance submitted the following:

Meeting held on Wednesday, February 26, 2003, at 1:05 p.m., Room 110, Farnum Building

Present: Senators Cassis (C), Garcia, McManus, Thomas and Brater

COMMITTEE ATTENDANCE REPORT

The Committee on Families and Human Services submitted the following:

Joint meeting held on Wednesday, February 26, 2003, at 2:00 p.m., Room 519, South Tower, House Office Building

Present: Senators Hardiman (C), Sanborn and Jacobs

Excused: Senators Hammerstrom and Clark-Coleman

Scheduled Meetings**Appropriations -****Subcommittee -**

Commerce, Labor and Economic Development - Wednesday, March 5, 3:00 p.m., Senate Appropriations Room, 3rd Floor, Capitol Building (373-2420)

Appropriations, Joint Senate/House - Thursday, March 6, 12:00 noon, House Appropriations Room, 3rd Floor, Capitol Building (373-2523)

Commerce and Labor - Tuesday, March 4, 3:00 p.m., Room 100, Farnum Building (373-2413)

Finance - Wednesday, March 5, 1:00 p.m., Room 110, Farnum Building (373-1758)

Senator Hammerstrom moved that the Senate adjourn.

The motion prevailed, the time being 10:25 a.m.

The President, Lieutenant Governor Cherry, declared the Senate adjourned until Tuesday, March 4, 2003, at 10:00 a.m.

CAROL MOREY VIVENTI
Secretary of the Senate