No. 80

JOURNAL OF THE SENATE

Senate Chamber, Lansing, Wednesday, November 10, 1999.

10:00 a.m.

The Senate was called to order by the President, Lieutenant Governor Dick Posthumus.

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

Bennett—present
Bullard—present
Byrum—present
Cherry—present
DeBeaussaert—present
DeGrow—present
Dingell—present
Dunaskiss—excused
Emerson—present
Emmons—present
Gast—present
Goschka—present
Gougeon—present
Hammerstrom—present
Hart—present
Hoffman—present
Jaye—present
Johnson—present
Koivisto—present
Leland—present
McCotter—present
McManus—present
Miller—present
Murphy—present
North—present
Peters—present
Rogers—present
Schuette—present
Schwarz—present
Shugars—present
Sikkema—present
A. Smith—present
V. Smith—present
Steil—present
Stille—present
Van Regenmorter—present
Vaughn—present
Young—present

Senator Christopher D. Dingell of the 7th District offered the following invocation:

Lord, we give thanks for the seasons. Those of romance, planting, and harvest are past. Deer hunters give thanks that theirs is here at last.

We hunt deer because we love to and because we love the environs where deer are found, which is invariably beautiful. Because of all the television commercials, cocktail parties, and assorted social posturing we have had to endure, we will escape. Because in a world where most men seem to spend their lives doing things they hate, our hunting is at once an endless source of delight and an act of small rebellion. Because deer do not lie or cheat and cannot be bought or bribed or impressed by power, they respond only to quietude, humility, and endless patience. Because we suspect that people are going along this way for the last time, we don't want to waste the trip.

Mercifully, there are no telephones in most deer blinds—certainly not mine—because only in the woods can we find solitude without loneliness and because libations out of an old tin cup tastes better out there. And, finally, not because we regard hunting as being so terribly important, but because we suspect that so many of the other concerns are equally unimportant and nowhere near as much fun. We give thanks. Amen.

Motions and Communications

Senators Jaye, Leland and Bullard entered the Senate Chamber.

Senator Rogers moved that Senators DeGrow and Goschka be temporarily excused from today's session.
The motion prevailed.

Senator Rogers moved that Senator Dunaskiss be excused from today's session.
The motion prevailed.

The following communication was received and read:

Office of the Senate Majority Leader

November 10, 1999

Pursuant to Senate Rule 1.105, I hereby appoint the following members to the Conference Committees on House Bill Nos. 4485, 4486 and 4487:

Senator Dale Shugars (Chair)
Senator Joe Schwarz
Senator Raymond Murphy

Sincerely,
Dan L. DeGrow
Senate Majority Leader

The communication was referred to the Secretary for record

The following communications were received:

Department of State

Administrative Rules
Notices of Filing

October 19, 1999

In accordance with the provisions of Section 46(1) of Act 306, Public Acts of 1969, as amended, and Executive Order 1995-6, this is to advise you that the Office of Regulatory Reform, Legal Division filed at 10:45 a.m. this date, administrative rule (99-10-13) for the Department of Environmental Quality, Air Quality Division, entitled *"Air Pollution Control,"* effective 15 days hereafter.

November 1, 1999

In accordance with the provisions of Section 46(1) of Act 306, Public Acts of 1969, as amended, and Executive Order 1995-6, this is to advise you that the Office of Regulatory Reform, Legal Division filed at 11:25 a.m. this date, administrative rule (99-11-01) for the Department of Consumer and Industry Services, Director's Office, entitled *"Cosmetology,"* effective 15 days hereafter.

November 1, 1999

In accordance with the provisions of Section 46(1) of Act 306, Public Acts of 1969, as amended, and Executive Order 1995-6, this is to advise you that the Office of Regulatory Reform, Legal Division filed at 11:28 a.m. this date, administrative rule (99-11-02) for the Department of Consumer and Industry Services, Corporation, Securities and Land Development Bureau entitled "*Manufactured Housing*," effective 15 days hereafter.

November 1, 1999

In accordance with the provisions of Section 46(1) of Act 306, Public Acts of 1969, as amended, and Executive Order 1995-6, this is to advise you that the Office of Regulatory Reform, Legal Division filed at 11:30 a.m. this date, administrative rule (99-11-03) for the Department of Consumer and Industry Services, Director's Office, entitled "*Nursing Scholarship Fund*," effective 15 days hereafter.

November 1, 1999

In accordance with the provisions of Section 46(1) of Act 306, Public Acts of 1969, as amended, and Executive Order 1995-6, this is to advise you that the Office of Regulatory Reform, Legal Division filed at 3:05 p.m. this date, administrative rule (99-11-04) for the Department of Consumer and Industry Services, Director's Office, entitled "*Medicine*," effective 15 days hereafter.

November 1, 1999

In accordance with the provisions of Section 46(1) of Act 306, Public Acts of 1969, as amended, and Executive Order 1995-6, this is to advise you that the Office of Regulatory Reform, Legal Division filed at 3:07 p.m. this date, administrative rule (99-11-05) for the Department of Consumer and Industry Services, Director's Office, entitled "*Medicine*," effective 15 days hereafter.

November 1, 1999

In accordance with the provisions of Section 46(1) of Act 306, Public Acts of 1969, as amended, and Executive Order 1995-6, this is to advise you that the Office of Regulatory Reform, Legal Division filed at 3:09 p.m. this date, administrative rule (99-11-06) for the Department of Consumer and Industry Services, Director's Office, entitled "*Osteopathic Medicine and Surgery*," effective 15 days hereafter.

November 1, 1999

In accordance with the provisions of Section 46(1) of Act 306, Public Acts of 1969, as amended, and Executive Order 1995-6, this is to advise you that the Office of Regulatory Reform, Legal Division filed at 3:11 p.m. this date, administrative rule (99-11-07) for the Department of Consumer and Industry Services, Director's Office, entitled "*Osteopathic Medicine and Surgery*," effective 15 days hereafter.

Sincerely,
Candice S. Miller
Secretary of State
Helen Kruger, Supervisor
Office of the Great Seal

The communications were referred to the Secretary for record.

The Secretary announced that the following House bills were received in the Senate and filed on Tuesday, November 9:
House Bill Nos. 5008 5009 5010 5016 5053

The Secretary announced the printing and placement in the members' files on Tuesday, November 9 of:
Senate Bill No. 885
Senate Joint Resolution N

Senator V. Smith moved that Senator Murphy be temporarily excused from today's session.
The motion prevailed.

Senators Murphy, DeGrow and Goschka entered the Senate Chamber.

Messages from the House

Senate Bill No. 505, entitled

A bill to amend 1984 PA 387, entitled "State food stamp distribution act," by amending section 1 (MCL 400.751).

The House of Representatives has passed the bill, ordered that it be given immediate effect and pursuant to Joint Rule 20, inserted the full title.

The question being on concurring in the committee recommendation to give the bill immediate effect,

The recommendation was concurred in, 2/3 of the members serving voting therefor.

The Senate agreed to the full title.

The bill was referred to the Secretary for enrollment printing and presentation to the Governor.

Senate Bill No. 506, entitled

A bill to amend 1939 PA 280, entitled "The social welfare act," by amending section 60 (MCL 400.60).

The House of Representatives has passed the bill, ordered that it be given immediate effect and pursuant to Joint Rule 20, inserted the full title.

The question being on concurring in the committee recommendation to give the bill immediate effect,

The recommendation was concurred in, 2/3 of the members serving voting therefor.

The Senate agreed to the full title.

The bill was referred to the Secretary for enrollment printing and presentation to the Governor.

By unanimous consent the Senate proceeded to the order of

Third Reading of Bills

By unanimous consent the Senate proceeded to consideration of the following bill:

Senate Bill No. 830, entitled

A bill to amend 1893 PA 206, entitled "The general property tax act," by amending section 9 (MCL 211.9), as amended by 1996 PA 582.

The above bill was read a third time.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

Roll Call No. 587 **Yeas—37**

Bennett	Goschka	McCotter	Shugars
Bullard	Gougeon	McManus	Sikkema
Byrum	Hammerstrom	Miller	Smith, A.
Cherry	Hart	Murphy	Smith, V.
DeBeaussaert	Hoffman	North	Steil
DeGrow	Jaye	Peters	Stille
Dingell	Johnson	Rogers	Van Regenmorter
Emerson	Koivisto	Schuette	Vaughn
Emmons	Leland	Schwarz	Young
Gast			

Nays—0

Excused—1

Dunaskiss

Not Voting—0

In The Chair: President

The Senate agreed to the title of the bill.

Senator Shugars moved that he be named co-sponsor of the following bill:
Senate Bill No. 830
The motion prevailed.

The following bill was read a third time:
Senate Bill No. 867, entitled
A bill to create certain authorities; to authorize creation of certain funds; to authorize expenditures from the funds; to finance the purchase of land and the development of certain convention facilities and of public improvements or related facilities; and to prescribe the powers and duties of certain state and local officials.
The question being on the passage of the bill,
The bill was passed, a majority of the members serving voting therefor, as follows:

Roll Call No. 588 **Yeas—36**

Bennett	Gast	McCotter	Shugars
Bullard	Goschka	McManus	Sikkema
Byrum	Gougeon	Miller	Smith, A.
Cherry	Hammerstrom	Murphy	Smith, V.
DeBeaussaert	Hart	North	Steil
DeGrow	Hoffman	Peters	Stille
Dingell	Johnson	Rogers	Van Regenmorter
Emerson	Koivisto	Schuette	Vaughn
Emmons	Leland	Schwarz	Young

Nays—1

Jaye

Excused—1

Dunaskiss

Not Voting—0

In The Chair: President

The Senate agreed to the title of the bill.

The following bill was read a third time:

Senate Bill No. 878, entitled

A bill to amend 1970 PA 193, entitled "An act to provide for the compilation of the general laws of this state and the compilation and revision of state administrative rules; and to prescribe the functions of the legislative council relative thereto," by amending the title and sections 1, 2, 3, 4, 5, 6, 7, and 8 (MCL 8.41, 8.42, 8.43, 8.44, 8.45, 8.46, 8.47, and 8.48).

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

Roll Call No. 589

Yeas—23

Bennett	Gougeon	McCotter	Shugars
Bullard	Hammerstrom	McManus	Sikkema
DeGrow	Hoffman	North	Steil
Emmons	Jaye	Rogers	Stille
Gast	Johnson	Schuette	Van Regenmorter
Goschka	Koivisto	Schwarz	

Nays—14

Byrum	Emerson	Murphy	Smith, V.
Cherry	Hart	Peters	Vaughn
DeBeaussaert	Leland	Smith, A.	Young
Dingell	Miller		

Excused—1

Dunaskiss

Not Voting—0

In The Chair: President

The Senate agreed to the title of the bill.

Protest

Senator Cherry, under his constitutional right of protest (Art. 4, Sec. 18), protested against the passage of Senate Bill No. 878.

Senator Cherry's statement is as follows:

I voted "no" on this bill and will be voting "no" on several bills in this package, which basically institutionalizes certain changes in the administrative rules process. I think it is important to realize at the outset that this is a set of circumstances that were thrust upon us as the courts have examined our current Joint Committee on Administrative Rules process. That court examination is ongoing, but it is pretty apparent that there are some constitutional questions and that there is a serious likelihood that it will not survive constitutional scrutiny. So, obviously, this package of bills is an attempt to deal with that and to outline some legislative prerogatives in that process.

As you begin to look at the package and begin to look at the options before us, I am wondering about the wisdom of proceeding with this package of bills. If our administrative rules process is not constitutional and we are not in a position of vetoing administrative rules by legislative action alone, then really we only have two options open to us.

One is the option of prohibiting within statute the ability of an agency to promulgate administrative rules. The other option we have is to go back after rules have been promulgated and alter that by legislation. In this package of bills is contemplated a process in which we would go back after the fact and alter rules by legislation.

We do not have to give ourselves that authority. This package would do that. As it gives us authority, it constrains what ability we have presently. It would set time lines by which we would have to act, in terms of submitting bills and having them pass both houses of the Legislature. Then if that legislation was to be vetoed, it would put time frames upon which we would have the ability to override that veto. Those are artificial time frames that we would be thrusting upon ourselves.

Currently, if an agency is to promulgate a rule and we are unhappy with that rule, we have the ability to submit a bill. We are not constrained by a time line. We can act on that legislation as we see fit both in the Senate and the House. If the Governor vetoes that bill and we are not happy with it, we can choose to override that veto when we see fit.

What we are doing with this package of bills is constraining ourselves. It is reducing power that we have currently available to us. That makes little or no sense to me. I do not know what we are gaining by this package. Ultimately, it just amazes me that we would take what little power we have left and constrain ourselves even further as this package of bills would require. On that basis, it is my intention to vote "no" on the package.

The following bill was read a third time:

Senate Bill No. 879, entitled

A bill to amend 1986 PA 268, entitled "Legislative council act," by amending sections 201, 202, and 203 (MCL 4.1201, 4.1202, and 4.1203), section 203 as amended by 1999 PA 101.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

Roll Call No. 590

Yeas—21

Bennett	Gougeon	McManus	Shugars
Bullard	Hammerstrom	North	Sikkema
DeGrow	Hoffman	Rogers	Steil
Emmons	Johnson	Schuette	Stille
Gast	McCotter	Schwarz	Van Regenmorter
Goschka			

Nays—16

Byrum	Emerson	Leland	Smith, A.
Cherry	Hart	Miller	Smith, V.
DeBeaussaert	Jaye	Murphy	Vaughn
Dingell	Koivisto	Peters	Young

Excused—1

Dunaskiss

Not Voting—0

In The Chair: President

The Senate agreed to the title of the bill.

The following bill was read a third time:

Senate Bill No. 877, entitled

A bill to amend 1969 PA 306, entitled "Administrative procedures act of 1969," by amending the title and sections 5, 7, 7a, 8, 24, 25, 33, 36, 40, 41a, 42, 44, 45, 46, 47, 48, 52, 53, 55, 56, 57, 58, and 59 (MCL 24.205, 24.207, 24.207a, 24.208, 24.224, 24.225, 24.233, 24.236, 24.240, 24.241a, 24.242, 24.244, 24.245, 24.246, 24.247, 24.248, 24.252, 24.253, 24.255, 24.256, 24.257, 24.258, and 24.259), the title as amended by 1993 PA 7, sections 5, 24, 52, and 56 as amended by 1982 PA 413, section 7 as amended by 1996 PA 489, sections 7a, 40, and 53 as added by 1984 PA 273, sections 8 and 57 as amended by 1988 PA 333, sections 42, 44, 45, and 46 as amended by 1993 PA 141, sections 48, 55, and 58 as amended by 1986 PA 292, and section 59 as amended by 1995 PA 178, and by adding sections 28, 34, 39, 39a, 45a, and 54.

The question being on the passage of the bill,

Senator Jaye offered the following amendments:

1. Amend page 28, line 21, after "(2)" by inserting "IF THE COMMITTEE DETERMINES THAT THE RULES INVOLVE THE AGENCY EXCEEDING THE STATUTORY SCOPE OF ITS RULE-MAKING AUTHORITY, THE COMMITTEE SHALL SPECIFICALLY REPORT THAT DETERMINATION TO THE LEGISLATURE ALONG WITH THE FILING OF THE NOTICE OF OBJECTION.".

2. Amend page 28, line 26, after "RULE." by inserting "IF THE COMMITTEE FILES A NOTICE OF OBJECTION AND IF IT REPORTS ITS DETERMINATION THAT THE AGENCY HAS EXCEEDED THE STATUTORY SCOPE OF ITS RULE-MAKING AUTHORITY, THEN THE ISSUE OF WHETHER THE AGENCY HAS EXCEEDED THE STATUTORY SCOPE OF ITS RULE-MAKING AUTHORITY SHALL BE DECIDED BY MAJORITY VOTE OF THE LEGISLATURE. IF THE LEGISLATURE DECIDES THAT THE STATUTORY RULE-MAKING SCOPE WAS EXCEEDED, THE OFFICE OF REGULATORY REFORM SHALL NOT FILE THE RULES AND THE RULES, WHETHER FILED OR NOT, HAVE NO LEGAL EFFECT.".

The amendments were not adopted, a majority of the members serving not voting therefor.

Senator Jaye requested the yeas and nays.

The yeas and nays were ordered, 1/5 of the members present voting therefor.

The amendments were not adopted, a majority of the members serving not voting therefor, as follows:

Roll Call No. 591

Yeas—17

Byrum	Goschka	Leland	Smith, A.
Cherry	Hart	Miller	Smith, V.
DeBeaussaert	Jaye	Murphy	Vaughn
Dingell	Koivisto	Peters	Young
Emerson			

Nays—20

Bennett	Gougeon	McManus	Shugars
Bullard	Hammerstrom	North	Sikkema
DeGrow	Hoffman	Rogers	Steil
Emmons	Johnson	Schuette	Stille
Gast	McCotter	Schwarz	Van Regenmorter

Excused—1

Dunaskiss

Not Voting—0

In The Chair: President

Senator Dingell offered the following amendments:
1. Amend page 28, line 4, after "HAS" by striking out "21" and inserting "60".
2. Amend page 29, line 15, after "(C)," by striking out "21" and inserting "60".
3. Amend page 29, line 20, by striking out "21-DAY" and inserting "60-DAY".
4. Amend page 29, line 21, after the second "THE" by striking out "21-DAY" and inserting "60-DAY".
5. Amend page 29, line 22, after "HOUSE." by striking out the balance of the subdivision.
6. Amend page 30, line 1, after "THE" by striking out "21-DAY" and inserting "60-DAY".
7. Amend page 30, line 2, after the second "THE" by striking out "21-DAY" and inserting "60-DAY".
8. Amend page 30, line 17, after the first "THE" by striking out "21-DAY" and inserting "60-DAY".
9. Amend page 30, line 21, after "EFFECT" by striking out "7" and inserting "30".
10. Amend page 30, line 27, after "THE" by striking out "21-DAY" and inserting "60-DAY".
11. Amend page 31, line 5, after "THE" by striking out "63-DAY".
12. Amend page 31, line 9, after "UNTOLLED" by striking out "21-DAY" and inserting "60-DAY".

The question being on the adoption of the amendments,
Senator V. Smith requested the yeas and nays.
The yeas and nays were ordered, 1/5 of the members present voting therefor.

The President pro tempore, Senator Schwarz, assumed the Chair.

The amendments were not adopted, a majority of the members serving not voting therefor, as follows:

Roll Call No. 592 **Yeas—16**

Byrum	Emerson	Leland	Smith, A.
Cherry	Hart	Miller	Smith, V.
DeBeaussaert	Jaye	Murphy	Vaughn
Dingell	Koivisto	Peters	Young

Nays—21

Bennett	Gougeon	McManus	Shugars
Bullard	Hammerstrom	North	Sikkema
DeGrow	Hoffman	Rogers	Steil
Emmons	Johnson	Schuette	Stille
Gast	McCotter	Schwarz	Van Regenmorter
Goschka			

Excused—1

Dunaskiss

Not Voting—0

In The Chair: Schwarz

Senator Young offered the following amendment:
1. Amend page 17, line 8, after "register" by inserting "not less than 30 days and not more than 90 days".

The question being on the adoption of the amendment,
Senator Young requested the yeas and nays.
The yeas and nays were ordered, 1/5 of the members present voting therefor.
The amendment was not adopted, a majority of the members serving not voting therefor, as follows:

Roll Call No. 593

Yeas—18

Byrum	Goschka	Miller	Smith, A.
Cherry	Hart	Murphy	Smith, V.
DeBeaussaert	Jaye	Peters	Vaughn
Dingell	Koivisto	Schwarz	Young
Emerson	Leland		

Nays—19

Bennett	Gougeon	McManus	Sikkema
Bullard	Hammerstrom	North	Steil
DeGrow	Hoffman	Rogers	Stille
Emmons	Johnson	Schuette	Van Regenmorter
Gast	McCotter	Shugars	

Excused—1

Dunaskiss

Not Voting—0

In The Chair: Schwarz

Protest

Senator Emmons, under her constitutional right of protest (Art. 4, Sec. 18), protested against the adoption of the amendment offered by Senator Young to Senate Bill No. 877.

Senator Emmons' statement is as follows:

I voted "no" on this amendment and intend to vote "no" on the rest of the amendments because I believe that we need to have a say in what rules are made by the bureaucrats.

It's funny that the process is being so roundly criticized this morning. I talked to Illinois legislators. This is almost exactly the process they have in Illinois. When I told them what we did in Michigan for years, they said "Huh, I can see why it all got thrown out. You've got three branches of government, and you actually can't tell the executive branch what to do. It's no wonder that you don't have any say at all." I want some say. This is at least giving us a notice. It gives a notice and a process to actually attack the rules that we don't like.

So I'm going to support the proposal and oppose all the amendments because I think there is a lot of wishful thinking going on. Thinking that we can go back to where we were, and it just ain't so, guys. Wake up, smell the coffee, and let's get on with the program and get this in place.

Senator Jaye offered the following amendment:

1. Amend page 28, line 26, after "RULE." by inserting "IF THE COMMITTEE FILES A NOTICE OF OBJECTION BASED UPON 1 OR MORE OF THE CONDITIONS DESCRIBED IN SUBSECTION (1)(A) THROUGH (G), THEN THE ISSUE OF WHETHER THE AGENCY HAS MET 1 OR MORE OF THE CONDITIONS DESCRIBED IN SUBSECTION (1)(A) THROUGH (G) SHALL BE DECIDED BY MAJORITY VOTE OF THE LEGISLATURE. IF THE LEGISLATURE DECIDES THAT THE AGENCY HAS MET 1 OR MORE OF THOSE CONDITIONS, THE OFFICE OF REGULATORY REFORM SHALL NOT FILE THE RULES AND THE RULES, WHETHER FILED OR NOT, HAVE NO LEGAL EFFECT.".

The question being on the adoption of the amendment,

Senator Jaye requested the yeas and nays.

The yeas and nays were ordered, 1/5 of the members present voting therefor.

The amendment was not adopted, a majority of the members serving not voting therefor, as follows:

Roll Call No. 594

Yeas—18

Byrum	Goschka	Miller	Smith, A.
Cherry	Hart	Murphy	Smith, V.
DeBeaussaert	Jaye	Peters	Vaughn
Dingell	Koivisto	Schwarz	Young
Emerson	Leland		

Nays—19

Bennett	Gougeon	McManus	Sikkema
Bullard	Hammerstrom	North	Steil
DeGrow	Hoffman	Rogers	Stille
Emmons	Johnson	Schuette	Van Regenmorter
Gast	McCotter	Shugars	

Excused—1

Dunaskiss

Not Voting—0

In The Chair: Schwarz

Senator Jaye offered the following amendments:

1. Amend page 3, line 20, after "ruling," by inserting "BULLETIN, MEMORANDUM, VIDEO OR ELECTRONIC COMMUNICATION, INTERNET COMMUNICATION,".

2. Amend page 4, line 4, after "fish" by inserting "IN EXCESS OF 12 MONTHS' DURATION".

3. Amend page 5, line 9, after "facility" by inserting "BUT DOES NOT INCLUDE A STATUS CHANGE RELATING TO MINIMUM PRISON TIME".

4. Amend page 6, line 9, by striking out the balance of the section.

The question being on the adoption of the amendments,

Senator Jaye moved that the question be divided and that a separate vote be taken on Amendment No. 1.

The motion prevailed.

The question being on the adoption of Amendment No. 1,

Senator Jaye requested the yeas and nays.

The yeas and nays were not ordered, 1/5 of the members present not voting therefor.

The amendment was not adopted, a majority of the members serving not voting therefor.

The question being on the adoption of Amendment Nos. 2 through 4,

Senator Jaye moved that the question be divided and that a separate vote be taken on No. 2.

The motion prevailed.

The question being on the adoption of Amendment No. 2,

Senator Jaye withdrew the amendment.

The question being on the adoption of Amendment Nos. 3 and 4,

Senator Jaye requested the yeas and nays.

The yeas and nays were not ordered, 1/5 of the members present not voting therefor.

The amendments were not adopted, a majority of the members serving not voting therefor.

The President, Lieutenant Governor Posthumus, resumed the Chair.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

Roll Call No. 595 **Yeas—21**

Bennett	Gougeon	McManus	Shugars
Bullard	Hammerstrom	North	Sikkema
DeGrow	Hoffman	Rogers	Steil
Emmons	Johnson	Schuette	Stille
Gast	McCotter	Schwarz	Van Regenmorter
Goschka			

Nays—16

Byrum	Emerson	Leland	Smith, A.
Cherry	Hart	Miller	Smith, V.
DeBeaussaert	Jaye	Murphy	Vaughn
Dingell	Koivisto	Peters	Young

Excused—1

Dunaskiss

Not Voting—0

In The Chair: President

The Senate agreed to the title of the bill.

Protests

Senators Cherry, Jaye and Dingell, under their constitutional right of protest (Art. 4, Sec. 18), protested against the passage of Senate Bill No. 877 and moved that the statements they made during the discussion of the bill and amendments be printed as their reasons for voting "no."

The motion prevailed.

Senator Cherry's statement is as follows:

I rise in support of the Jaye amendment, but I would also like a point of personal privilege, too, as I debate this because ultimately, while I agree with the maker of the amendment, it seems to me that I don't agree with his comments in support of his amendment.

In those comments, I think he impugned a number of fine individuals who have served on the Joint Committee on Administrative Rules in the past who are no longer in this body, some who have served in the past who are still in this body, and some who continue to serve. He's correct that a number of rules were never rejected but not for the motives that he suggests. Not that they were taking pay-offs from agencies for their constituents or for themselves, personally, but quite frankly, the reason why they weren't rejecting it is because when a bad rule came before the committee and because the committee had the power to reject they were able to tell the agency, "Look, you are in error. If you expect us to approve your rules, you will go back and correct it. You will make them more appropriate. You will construct them in the way that people can live with them." That is the reason why, ultimately, the process worked and there weren't rejections.

I served on that committee for a short period of time. I served with, I think, honorable people. I did not ever see one of them do the kind of thing that the Senator from the 12th District suggests. Nevertheless, in spite of the fact that he impugned members, I do think his amendment has some standing, and it is an appropriate one. I support it because without it, quite frankly, legislation addressing this problem is without purpose.

We do have powers, and what this package bills does is it constrains our powers. It's simply giving away what last remnant of power we have in the rule-making process. His amendment preserves for us a viable role in this process, and it's an important role because administrative rules sometimes, more than the legislation itself, impact our constituents. We need the ability and the leverage of rejection to ensure that the agency is responsible as it promulgates rules.

By and large, we all know a number of bureaucrats in the state, and they are fine individuals as well. But sometimes when you have the ability to act unilaterally, there are concerns and aspects you simply don't consider, or perhaps you don't have the knowledge of what practically that rule requires a person to do to comply with it. It is the administrative rules process that makes that rule debatable. It makes it open to the public light. It brings other points of view to bear, and through that process, we generally have much stronger, more appropriate administrative rules.

I would urge that we preserve our role with the adoption of the Jaye amendment for reasons other than were put forward by the Senator from the 12th District, but I think the amendment is a sound one and ought to be adopted.

Senator Jaye's first statement is as follows:

There is a hierarchy of laws in the state of Michigan. There's a Constitution. Underneath the Constitution are statutes; underneath the statutes are rules; underneath the rules are bulletins; underneath bulletins are memorandums; underneath memorandums are letters; and underneath letters are forms.

What this amendment says is that the word rule encompasses any communication by the department regarding an issue that has the force of law. Imagine a water balloon, if you put some limits on the size of the water balloon, the bureaucrats will find another way. They'll say it's not a rule. It's a bulletin, a memorandum, a communication, a form. So what this amendment says is whatever you call a rose by any other name is a rose—any kind of communication, whether it's by video, electronic, the Internet, a bulletin or memorandum, it's a rule, and those rules would have to be approved by at least a Joint Committee on Administrative Rules. Why is it necessary for us to include communications like called a bulletin?

Earlier this year, the Department of Treasury, without legislative approval, changed the depreciation tables. The Department of Treasury changed and accelerated when the major manufacturers were able to depreciate the value of their equipment. That resulted in 1999 of a tax cut of a $108 million to the corporations and then starting in the calendar year of 2000, $250 million in a tax break, not to all business segments but to the segments that are mostly the heavy manufacturing businesses that got the tool, the die and the stamping. Can you imagine the Treasury Department deciding then under a different administration or even the current administration having another bulletin, they would increase the amount of money that these companies have to pay? So whether you have an objection that we should not be reducing taxes or whether we should be increasing taxes, don't you believe that a scope of change of $250 million a year is an issue that should be decided collectively by the Legislature and not by some unaccountable, unelectable bureaucrats in the Treasury Department? Two-hundred and fifty million dollars next year and $108 million this year based on a bulletin. Can we agree that these sorts of communications—and it's not just by treasury, it's by the assessing department; it's by the health department; it's by the environmental department; it's by all the consumer and industry services for rules regarding nursing homes, daycare operations, people that hold a license to conduct their business, doctors and dentists or people that are certified dental hygienists and other technicians—from bureaucrats that have a force of law should have to come to the Joint Committee on Administrative Rules? I hope you will agree to that and that's what this first amendment does. It says that "Communications from the department that have the force of law must be approved at least by the Joint Committee on Administrative Rules."

Senator Jaye's second statement is as follows:

On page 3, line 25, of Senate Bill No. 877, it says rules do not include the following: (a) a resolution or order of the state administrative board, (b) a formal opinion of the attorney general, (c) a rule or order establishing or fixing rates or tariffs, (d) game and fish rules, (e) streets and highways, (f) a contested case. However, there are some areas that I believe should be part of the legislative approval process. That is what Amendment Nos. 3 and 4 deal with.

If you look on page 5, line 7, it says none of the legislative authority will consider any rules or policy that concerns the inmates of a state correctional facility. I don't believe that's appropriate. When I was serving on the Joint Committee on Administrative Rules, the Corrections Department, in an effort to release current prisoners earlier, I wanted to change the rules for what constituted personal use of drugs. They wanted to say that instead of approximately a pound or less was for personal use, they wanted to say that no—let's move that up to 32 pounds. About the size of a leaf bag would be considered for personal use if that person wasn't a drug dealer. The Corrections Department wanted to change from 6 ounces to I believe it was something like 30 or 40 ounces of cocaine for personal use, as opposed to a drug dealer. Fortunately, my staff was able to catch this. It was presented to the committee in a stack of paperwork that was about three-feet tall, and the department withdrew the rules.

If we pass this exception from the rules process, that means that the Corrections Department on any issue never has to submit their changes on the status of a prisoner for legislative concurrence. What Amendment No. 3 says is that the rules that include a status change relating to the minimum prison time would come before the Legislature.

The second amendment is on page 6, line 9. It says any policy developed by the Family Independence Agency, the welfare department, setting income and asset limits would not be considered a rule. Well, the welfare department changed the rules. It used to be that you couldn't own a car that was worth more than approximately $3,000. Now you are eligible for welfare and you can have as many vehicles, luxury vehicles or sports utilities, as you want. Also, there used to be limits on what kind of property or what kind of income-generating assets you could have and also still be eligible for taxpayers' money. Now the welfare department doesn't consider any land. You can have rental units. You can have asset-generating property, and those items and those decisions would not be decided by the Legislature but would be decided by the department.

There are exceptions (a) through (n). Another one is a policy developed by the Family Independence Agency to implement the requirements mandated by federal statute. Just a few weeks ago, don't forget, the welfare department was coming to us to have a statewide Friend of the Court collection system in which they were given five years of an extension by Congress. They failed to implement it after five years, were fined several million dollars, and they contracted with a private firm without legislative authority, spent the money without an appropriation, and came back to us after the fact.

So I do believe that it is appropriate in these cases in the Corrections Department and the welfare department where these policies are costing the taxpayers multi-millions of dollars, where these policies may be putting law-abiding people at risk by early release of prisoners, and that these policy decisions be decided by the Legislature, not by unaccountable bureaucrats who are never held accountable for any loss of taxpayer dollars or increase threat or actual acts of violence by early release prisoners.

These amendments would say that there are rules under legislative authority regarding corrections and the welfare agency actions. I request your support on these two amendments.

Senator Dingell's first statement is as follows:

The package that we have in front of us marks a wholesale withdrawal by the Legislature from the administrative rules process. The Legislature is consenting to emasculate itself. What the bill in front of us does in its current form, the bill would eliminate most of the JCAR process and instead would only give the Joint Committee on Administrative Rules 21 days to consider a proposed rule. If the Joint Committee on Administrative Rules adopted a notice of objection by a concurrent majority within that 21-day period, then a bill would have to be drafted, introduced and passed by the Legislature within 21 days after that notice of objection is adopted. In the event that the Governor were to veto the bill, the Legislature would only have seven days to override the veto before the rule was filed and became effective.

You know, in 21 days, I couldn't get something as universally accepted as the Ten Commandments drafted, much less passed by the Senate, passed by the House, put on the Governor's desk and a veto override by both the House and Senate within seven days. This is laughable. This is a wholesale withdrawal of any kind of effective oversight over the administrative rules process. You need something more than that. A more reasonable period for the committee to consider a rule would be something like 60 days. A more reasonable period for enactment for something that was really clear-cut would be something like 60 days. So what my amendment here does is apply a 60-day period to both the committee's consideration of a proposed rule and the Legislature's consideration of legislation to overturn a rule. This makes a whole heck of a lot more sense—21 days makes absolutely no sense. If you like 21 days, you're in favor of a wholesale withdrawal from the rule-making process, both oversight as well as input into it, so I recommend this amendment to my colleagues.

Senator Dingell's second statement is as follows:

My apologies for rising to speak again, but my friend and colleague from the 22nd District, Senator Van Regenmorter—his experiences with the drafting process are considerably different from mine. This bill is an abomination and part of the reason why is because if the Governor, who is completely in control of the rule-making process, decides he's going to surprise the Joint Committee on Administrative Rules, he has the ability to do that under either the current law or law the way this bill would make it in its current form. There would be complete surprise as to what the rule was going to be, and you really wouldn't know that you needed a bill to overturn an administrative rule. You're going to get something drafted in 21 days? I'll tell you—there are bills that I just got in my office that I filed priority requests for last November—priority requests—and I just got them this week. They weren't difficult requests to draft; they were things that were model bills drawn up by very skilled drafters. It took that long, though, to get them drafted. The timetables in this make a mockery of the whole process. Sixty days is something that might be workable. Twenty-one days is ridiculous. It's preposterous. It's a joke.

Senator McCotter asked and was granted unanimous consent to make a statement and moved that the statement be printed in the Journal.

The motion prevailed.

Senator McCotter's statement is as follows:

We cannot view this issue in a vacuum. I appreciate the minority members' concern about keeping us a concomitant, co-equal branch of government. But when we hear about discussions of the role of legislation in the administrative rules process, we have to remember that when we view this, the Legislature has other means at its disposal to help influence executive action. That, perhaps, is why discussions were entered into to keep us a part of the administrative rules process unless those other means come to the fore and are utilized. This is not the end of democracy as we know it—it is an attempt to keep the Legislature in place. I would like the record to reflect that an administrative rule is, by definition, an executive branch function. Oversight of the legislative branch is necessary, but it is not going to be the end of the world if that power is circumscribed, which has already been done by the courts to the point of elimination.

The Assistant President pro tempore, Senator Hoffman, assumed the Chair.

Senator Rogers moved that Senator Schwarz be temporarily excused from the balance of today's session.

The motion prevailed.

The following bill was read a third time:

House Bill No. 4624, entitled

A bill to amend 1953 PA 232, entitled "An act to revise, consolidate, and codify the laws relating to probationers and probation officers, to pardons, reprieves, commutations, and paroles, to the administration of correctional institutions, correctional farms, and probation recovery camps, to prisoner labor and correctional industries, and to the supervision and inspection of local jails and houses of correction; to provide for the siting of correctional facilities; to create a state department of corrections, and to prescribe its powers and duties; to provide for the transfer to and vesting in said department of powers and duties vested by law in certain other state boards, commissions, and officers, and to abolish certain boards, commissions, and offices the powers and duties of which are transferred by this act; to allow for the operation of certain facilities by private entities; to prescribe the powers and duties of certain other state departments and agencies; to provide for the creation of a local lockup advisory board; to prescribe penalties for the violation of the provisions of this act; to make certain appropriations; to repeal certain parts of this act on specific dates; and to repeal all acts and parts of acts inconsistent with the provisions of this act," by amending sections 34 and 44 (MCL 791.234 and 791.244), section 34 as amended by 1998 PA 512 and section 44 as amended by 1992 PA 181.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

Roll Call No. 596 **Yeas—25**

Bennett	Goschka	Johnson	Schuette
Bullard	Gougeon	McCotter	Shugars
Byrum	Hammerstrom	McManus	Sikkema
DeGrow	Hart	Miller	Steil
Dingell	Hoffman	North	Stille
Emmons	Jaye	Rogers	Van Regenmorter
Gast			

Nays—11

Cherry	Koivisto	Peters	Vaughn
DeBeaussaert	Leland	Smith, A.	Young
Emerson	Murphy	Smith, V.	

Excused—2

Dunaskiss	Schwarz

Not Voting—0

In The Chair: Hoffman

The Senate agreed to the title of the bill.

Protests

Senator V. Smith and Young, under their constitutional right of protest (Art. 4, Sec. 18), protested against the passage of House Bill No. 4624.

Senator V. Smith moved that the statement he made during the discussion of the bill be printed as his reasons for voting "no."

The motion prevailed.

Senator V. Smith's statement, in which Senator Young concurred, is as follows:

We're about to have two bills appear in front of us that came out of the Judiciary Committee. This is the first one, and this bill will do a number of things. It would remove a prisoner's right to appeal a parole board hearing, and it would change the time in which parole boards have to review inmates serving life sentences.

There are two things that I find are problematic with this proposed bill. One is that I think—at least from my perspective—it's not fair. We will still allow the prosecutor the right to appeal a parole board hearing if he is not happy with the determination, but we would eliminate the prisoner's right. One of the things that we also eliminate in this bill is any written record. I'm not quite sure how a prosecutor would appeal a parole board hearing if we eliminate the written record, but I guess since that would all be in the administration's hands, maybe for the prosecutor's appeal a written record would be given. But when it came to a prisoner, he would no long have a written record. He also would statutorily be prohibited from having an appeal at all.

One of the other problems that I thought this legislation raised—and I'm quite sure that my distinguished chairman is getting ready to respond—is that I received a number of letters from trial judges who handle criminal cases throughout this state. One of the things that the trial judges had in their letters was the fact that they have sentenced some inmates, some defendants to parolable life rather than a determinate number of years. The rationale by those judges was that they knew that because the statutory requirement was ten years to have parole reviews, that the inmate would get a parole review quicker if they gave them a life term rather than giving them a determinate sentence or an indeterminate sentence of 20 to 45 years. That figured in the rationales of some of the judges in this state as they sentenced inmates that were appearing before them.

I guess the last thing that bothers me about this piece of legislation is that it is retroactive. It would apply to everyone that is presently serving a life term. Being retroactive, in effect, eliminates some of the progress that the Judiciary Committee made last year in the 650-Lifer law by making it retroactive by having the elimination of a written hearing by making it discretionary to have a hearing at all by the parole board; we affect the changes that were made last year to the 650-Lifer law. In my estimation, they have been eliminated by the propositions in this bill.

Those are some of the problems that I have with this particular piece of legislation.

The following bill was read a third time:

House Bill No. 4625, entitled

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," (MCL 760.1 to 777.69) by adding section 3a to chapter X.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

Roll Call No. 597

Yeas—24

Bennett	Gougeon	McCotter	Schwarz
Bullard	Hammerstrom	McManus	Shugars
DeGrow	Hoffman	Miller	Sikkema
Emmons	Jaye	North	Steil
Gast	Johnson	Rogers	Stille
Goschka	Koivisto	Schuette	Van Regenmorter

Nays—13

Byrum	Emerson	Murphy	Smith, V.
Cherry	Hart	Peters	Vaughn
DeBeaussaert	Leland	Smith, A.	Young
Dingell			

Excused—1

Dunaskiss

Not Voting—0

In The Chair: Hoffman

Pursuant to Joint Rule 20, the full title of the act shall be inserted to read as follows:

"An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act,".

The Senate agreed to the full title.

Protests

Senators V. Smith, Young and A. Smith, under their constitutional right of protest (Art. 4, Sec. 18), protested against the passage of House Bill No. 4625.

Senator V. Smith moved that the statements he made during the discussion of the bill be printed as his reasons for voting "no."

The motion prevailed.

Senator V. Smith's first statement, in which Senator Young concurred, is as follows:

I know this issue may not be important to everyone, but if you are concerned with the quality of the American Constitution and if you are concerned with making sure that the rights of the innocent are protected and the guilty are punished, then I would hope you would at least listen to the arguments I am trying to put on the table. What I am telling you is that we are setting up a two-tier system with this legislation. If you have money, then you automatically have a right to appeal and you have a right to have leave to appeal, because you have money and you can hire an attorney. If you don't have money, we're going to take away 97 percent of the time and that was the testimony in front of the Judiciary Committee. Ninety-seven to 98 percent of criminal defenders would have no ability to file an appeal on their own; they would have to have competent legal counsel. So that means only 2 percent might have the ability, as a jailhouse lawyer, to file a competent appeal which is not thrown out on a procedural basis in front of the Court of Appeals. So, in effect, you're eliminating all appeals on behalf of indigent defenders who cannot afford to hire an attorney.

We are setting up a two-tier system—one for the rich and one for the poor. If you are rich, no problem, you can go out and have all of the justice that your money can provide. But if you're poor, shame on you. Once we lock you up, if you offer a guilty plea, we can lock you up and throw away the key.

At the same time this body is taking up this bill that has already passed the House and has passed the Senate Judiciary Committee, the Michigan Supreme Court is deciding this exact same issue. They are deciding it in the case of The People v. Bolger. I watched the constitutional arguments being made in The People v. Bolger. I watched lawyers make their presentation before the Michigan Supreme Court. The scenario I would like to point out to this body is what happens if this body today passes this legislation, sends it to the Governor, he signs it and 5 years from now, 3 years from now, or 2 years from now, the Michigan Supreme Court—not even the United States Supreme Court—decides there is a right to have an attorney appointed when you file a leave to appeal in this state for a criminal conviction even if it is by a guilty plea.

Every county, all 84 of them, once we pass this legislation, will as a matter of course begin to instruct their attorneys that when a criminal asks for an attorney to be appointed, the judges will tell him no because the statute prohibits it. If the Michigan Supreme Court disagrees with this body and finds that it is constitutional, that it is a constitutional requirement, every one of those criminal defendants will be eligible to go back and have their cases retried or have their appeals re-filed with the help of attorneys paid for by the state. Now that seems to be a real danger and a real cost danger that we step into by passing this at the present time.

When I was in front of the committee, I told the committee that after listening to the arguments in The People v. Bolger, I heard and found that there were constitutional ways that the number of appeals could be narrowed even further but not through an unconstitutional process such as eliminating the right to have a counsel. Even when there is justification found for a leave to appeal, we're stepping into treacherous waters. I listened to the questions that Chief Justice Weaver put to the people's attorney and to the defense attorney. I listened to the questions that Justice Cliff Taylor put and Justice Robert Young put. Every one of those Republican justices who have a history of a conservative track record

were asking the people's attorneys questions as to what case law basis can you give us to show that what you are arguing has a constitutional basis. He could not cite any. He could not cite one case—one case—to lay out support that this action would be constitutional. The only argument he could cite was a minority decision by Justice Thomas in a dissenting opinion in a case that was decided in a 6-3 majority/minority decision, and Justice Thomas was in the dissenting minority. Not one court has followed that dissent since. There is not a state in the Union which does not allow a right to appeal criminal cases. This, in effect, would accomplish that goal by taking away the right to have an attorney. We don't have the guts to confront the issue directly and deny all appeals of any criminal convictions made by a guilty plea in this state. But we will go around the back door and try to knock out 98 percent of them by denying them the right to have an attorney. This is a dangerous piece of legislation. It provides danger to every citizen who is ever caught in the criminal justice system. And Lord help you if you are innocent and are being pressed in this system because I assure that the first thing your defense lawyer is going to tell you is you may be innocent all you want, but if you take this case all the way and lose, you're going to carry the weight. And you have got to decide whether you are going to bail out or whether you are going to profess your innocence all the way until the end.

Has there been instances where we've had innocent people found guilty? They are happening all over the country. We've got a guy who worked for the FBI, who was a technician, who worked in four different states who was given false testimony and backing it up, and every one of those criminal defendants that plead guilty based on that so-called expert testimony may very well have been innocent and railroaded. In Michigan, under this law, they wouldn't have even had a right to appeal. They would be locked up for the rest of their lives, not having the chance to have a parol hearing and not have the chance to have had proper representation in preparing an appeal of their criminal conviction in the first place.

I think this is dangerous. I think this is unconstitutional, and I think it is premature. I hope this body would turn it down.

Senator V. Smith's second statement, in which Senator Young concurred, is as follows:

I have to object to some of the characterizations that the chairman has given this body because I think they are incorrect.

One, when a criminal defendant is in front of a judge for taking a guilty plea, the chairman gave the impression that on a Cobb's plea, it is a negotiated-out plea where the prosecutor and the defendant have basically agreed on a sentence; the judge stamps that agreement and gives that criminal defendant the knowledge that if you plead guilty, I'll give you such-and-such a sentence. They've worked it out beforehand. But that is not done in most of the sentencing that is done by judges in the criminal courts. Most sentencings that are done by judges in the criminal court are not done by Cobb's sentencing plea.

The chairman gave the impression that on other sentences, those criminal defendants also have some idea of what the sentence will be before they plead guilty. I would argue that the same court rules that the chairman pulled out to give rationale and justification as to why this bill would be approved also specifically states that a judge must specifically ask the criminal defendant, "Has anyone promised you anything to get you to plead guilty?" If the criminal defendant does not answer "No," then the plea cannot go forward. That is to say that a criminal defendant cannot be promised any specific sentencing agreement if it's not done in a Cobb's agreement and that it is up to the trial judge as to what that sentence will be and there is no agreement; the judge will not accept a plea if somebody has promised that there is an agreement.

They are specifically asking a criminal defendant if there has been any promises made to him, and if he does not say "No," then the sentencing will not go forward. That would be, in my estimation, in direct contradiction to the amendment that was passed by this body yesterday because that amendment says that the criminal defendant must be told that by giving this guilty plea, they would be automatically waiving their right to appointed counsel. If they are automatically waiving their right to appointed counsel, they would not have any ability to plea at all or any ability to raise any objections to that plea at all because, in effect, they will also be waiving their right before the criminal plea is taken.

There are, in the representation of a criminal defendant, times when criminal defense lawyers make mistakes. There might be a dual charge that is based on the same facts which a criminal defense lawyer should, by motion, challenge. What if the criminal defense lawyers do not challenge it by motion? One, if they don't challenge it, they, in effect, did not preserve that argument, and two, if they don't challenge it, they may have violated their own ethics that every member of the State Bar has to swear to in terms of representing their clients with all of the standards that an attorney in that practice would put before the court.

So, in effect, if you take out and just limit the ability to have an appeal on a few statutory bases that are allowed in this statute, all criminal defendants who are not knowledgeable about the law, who are not lawyers, are put in a position where they have waived their automatic right to have an attorney appointed in their case when they may not have the knowledge to understand, at the time when they make that plea, that all of the proper motions that should have gone in front of the court were not made. We're trying to put a system in place whereby mistakes can be made, but we're saying that no mistakes can be made and that mistakes that are made will not even be acknowledged.

From the testimony that was put in front of the Judiciary Committee by the state Public Defenders Office, we're talking about 98 percent of the people that make pleas in criminal cases who don't have the specific ability to file an appeal on their own behalf. So we're making a wide distinction between those who have money and those who do not have money. And we're locking that distinction in by having them do a waiver of the right to counsel at the time that

the plea is made, and, in effect, waiving any mistakes that their attorney might have made in having the case flow on that basis. Most criminal defendants who are properly doing their job will put up every motion and every argument procedurally before they actually get to the point of deciding whether they are going to take a plea or not. But what if that does not occur? If it does not occur, you are, in effect, excluding any of those opportunities for an innocent person to have an appellate court, which won't take a leave to appeal unless they find a basis for it. We're excluding the appellate courts from even going that far and from being able to take an appeal even if they find a basis for it by putting in this automatic waiver and excluding the ability to have counsel appointed.

I don't think that the voters when they passed the automatic right to eliminate the automatic right to appeal were also saying at the same time that they were also going to eliminate all appeals whatsoever. That's an entirely different question. The answer may not have been the same if the voters in this state had been asked the question, "Should we eliminate all appeals of criminals who plead guilty?" In effect, that's what this legislation is doing. It would be eliminating all ability to appeal by 98 percent of those who plead guilty. I think that we're setting ourselves up for a fall, that this legislation could cost the state an enormous amount of money down the line, and that this is a dangerous precedent for this body to do at this time. I would again hope that the body would vote "no."

Senator A. Smith's statement is as follows:

I voted "no" on House Bill No. 4625 for two very basic reasons. The first one being that I believe this bill is unconstitutional. The second reason being that I believe this legislation reenforces what the general public already believes about the criminal justice system. That is, if you are poor, you don't get justice, and if you have money and resources then you have the right to justice, and you often get it. I think that's a terrible message for the Legislature of the state of Michigan to be reinforcing.

Senator Schwarz entered the Senate Chamber.

By unanimous consent the Senate proceeded to the order of

General Orders

Senator Rogers moved that the Senate resolve itself into the Committee of the Whole for consideration of the General Orders calendar.

The motion prevailed, and the Assistant President pro tempore, Senator Hoffman, designated Senator Bennett as Chairperson.

After some time spent therein, the Committee arose; and, the President pro tempore, Senator Schwarz, having resumed the Chair, the Committee reported back to the Senate, favorably and without amendment, the following bills:

House Bill No. 4628, entitled

A bill to amend 1959 PA 168, entitled "An act to provide for township planning; for the creation, organization, powers and duties of township planning commissions; for the regulation and subdivision of land; and to prescribe penalties and provide remedies," by amending section 9 (MCL 125.329).

House Bill No. 4629, entitled

A bill to amend 1846 RS 16, entitled "Of the powers and duties of townships, the election and duties of township officers, and the division of townships," by amending section 72a (MCL 41.72a), as amended by 1996 PA 465.

Senate Bill No. 456, entitled

A bill to amend 1970 PA 207, entitled "An act to exempt certain dogs from license fees," by amending section 1 (MCL 287.291), as amended by 1984 PA 112.

House Bill No. 4618, entitled

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending section 2441 (MCL 600.2441).

The bills were placed on the order of Third Reading of Bills.

The Committee of the Whole reported back to the Senate, favorably and with a substitute therefor, the following bill:

Senate Bill No. 668, entitled

A bill to amend 1988 PA 161, entitled "Consumer financial services act," by amending sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, and 19 (MCL 487.2052, 487.2053, 487.2054, 487.2055, 487.2056, 487.2057, 487.2058, 487.2059, 487.2060, 487.2061, 487.2062, 487.2064, 487.2065, 487.2066, 487.2067, and 487.2069), sections 5, 7, 8, 11, 12, and 15 as amended by 1992 PA 76, and by adding sections 10a, 10b, 10c, 10d, 10e, 10f, 10g, 16a, and 16b; and to repeal acts and parts of acts.

Substitute (S-2).

The Senate agreed to the substitute recommended by the Committee of the Whole and the bill as substituted was placed on the order of Third Reading of Bills.

The Committee of the Whole reported back to the Senate, favorably and with a substitute therefor, the following bill:

Senate Bill No. 756, entitled

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending section 411 (MCL 750.411).

Substitute (S-1).

The Senate agreed to the substitute recommended by the Committee of the Whole and the bill as substituted was placed on the order of Third Reading of Bills.

Resolutions

The question was placed on the adoption of the following resolution consent calendar:

Senate Resolution No. 101

The resolution consent calendar was adopted.

Senators Emmons, North, McManus and Schuette offered the following resolution:

Senate Resolution No. 101.

A resolution honoring the 50th Anniversary of Coastal Corporation's ANR Pipeline Company.

Whereas, The Coastal Corporation's subsidiary, ANR Pipeline Company, one of the nation's largest natural gas transportation companies, began operations November 1, 1949. During the past 50 years, ANR has developed a long-standing reputation for reliable, dependable service, environmental stewardship, and responsible corporate citizenship; and

Whereas, With its main office in Detroit, Michigan, the company was the vision of William G. Woolfolk, who saw the potential of clean-burning natural gas as the fuel of the future. It was his idea to build a pipeline from the Texas/Oklahoma panhandle region—where rich reserves of natural gas had been found—to customers in Michigan and Wisconsin; and

Whereas, Originally called Michigan Wisconsin Pipe Line Company, the business began as a 1,500-mile pipeline with 375 employees and three compressor stations pumping natural gas from the Southwest to the Midwest; and

Whereas, Now, 50 years later, Coastal's ANR Pipeline Company operates more than 10,600 miles of pipeline in 18 states and the Gulf of Mexico and 74 compressor stations equipped with one million horsepower. ANR's 2,000 employees—1,080 of them in Michigan—provide natural gas transportation services for utilities, electric power producers, and other large-volume natural gas users beyond its traditional Midwestern market area. In addition, ANR and its affiliates operate 16 underground natural gas storage fields, with approximately 240 billion cubic feet of capacity in Michigan; and

Whereas, In addition to reliable, dependable service to customers, another ANR tradition is community service. By supporting nonprofit agencies and organizations in the communities where ANR does business and where its employees live and work, the company continually seeks to fulfill its commitment to being a good corporate citizen; and

Whereas, The ANR Pipeline Company Community Investment Program makes cash and in-kind contributions to organizations that promote community development, benefit the health and welfare of citizens, provide educational programs, and support cultural opportunities. The program's Volunteer Involvement Council organizes volunteer projects for ANR employees who wish to donate their time to help improve the quality of life in their communities; and

Whereas, As we approach a new millennium, Mr. Woolfolk's vision continues to grow and thrive. In a world that has become increasingly environmentally aware, natural gas is rapidly becoming the fuel of choice and Coastal Corporation's ANR Pipeline Company continues to ably serve the needs of people here in Michigan and throughout the United States; now, therefore, be it

Resolved by the Senate, That we honor the 50th Anniversary of Coastal Corporation's ANR Pipeline Company; and be it further

Resolved, That a copy of this resolution be transmitted to Coastal Corporation's ANR Pipeline Company as evidence of our respect and esteem.

Senators Young, Shugars and Goschka were named co-sponsors of the resolution.

Senate Resolution No. 73.

A resolution to request the Michigan Board of Dentistry to reconsider disciplinary subcommittee sanctions imposed on Kimberlee Miller, and to clarify who may lawfully engage in the practice of teeth whitening to the general public.

The question being on the adoption of the resolution,

The resolution was adopted.

Senate Concurrent Resolution No. 26.

A concurrent resolution to memorialize the Congress of the United States to enact legislation to provide for the establishment of a national cemetery in the Detroit metropolitan area.

The question being on the adoption of the concurrent resolution,

The concurrent resolution was adopted.

Senator Vaughn was named co-sponsor of the concurrent resolution.

Senator Rogers asked and was granted unanimous consent to make a statement and moved that the statement be printed in the Journal.

The motion prevailed.

Senator Rogers' statement is as follows:

I think this is an important issue for the chamber. It is Veterans Day tomorrow, a day in which we honor all those who have served this great country.

You know, we have one of the largest veterans population density-wise in the country. We have nearly 900,000 men and women who have served the United States military service for the defense of the United States. We are in dire need in this state and this region of a national cemetery. Arlington is rapidly filling up with World War II veterans approaching the age where they are passing on. It is imperative that we provide a resting place here in Michigan for those who have served this country.

It is said, Mr. President, that the character of a nation is judged by how that country takes care of those who have served her. This is a small price to pay. I encourage Congress to, in fact, locate a national cemetery in southeast Michigan, the Detroit area, to service that very large population of veterans.

Of interest, Mr. President, is the fact that by about 2008, Michigan will have 51 veterans per day pass on right here in our state. That's a significant number.

We need a final resting place for those who have honored us with their service. I recommend passage of this resolution.

Senators McManus, Bennett, Gast, Gougeon, Sikkema, Goschka, Rogers, Dingell, Byrum, Leland, Cherry and V. Smith offered the following concurrent resolution:

Senate Concurrent Resolution No. 28.

A concurrent resolution to urge the United States Environmental Protection Agency to make its regulatory decisions under the Food Quality Protection Act on the basis of sound science and to approve the use of certain products.

Whereas, The Environmental Protection Agency (EPA) is in the process of making regulatory decisions under the provisions of the Food Quality Protection Act of 1996. This review process, which involves seeking public comment, requires the EPA to consider the impact, uses, benefits, and risks of a host of chemicals available for use at various stages of growing and processing agricultural products; and

Whereas, One of the first classes of pesticides the EPA is reviewing is organophosphate insecticides. This group of compounds includes chlorpyrifos, the active ingredient in Lorsban, a widely used insecticide that is important to Michigan agriculture and a well-respected tool for many farmers; and

Whereas, In its review, the EPA should base its decision and set tolerance levels in response to scientific data reflecting real-world use of the products. The standards should not be based on hypothetical situations. Determinations should be based on a weight of evidentiary evaluation of all scientific data provided. The EPA should avoid overly conservative decisions that put Michigan and growers across the United States at a competitive disadvantage to producers of other nations. In addition, the review process must also include full information on the extent that the various products contribute to the success of modern farming; and

Whereas, Chlorpyrifos is an important tool in the effort to control pests in agriculture. Its use and impact are supported by a large body of scientific data. Those who rely on this material in their operations worry that federal decision-making agencies may not understand fully the extent of the use and the importance of this material; now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That we urge the United States Environmental Protection Agency to make its regulatory decisions under the Food Quality Protection Act on the basis of sound science and to approve the use of chlorpyrifos products; and be it further

Resolved, That a copy of this resolution be transmitted to the United States Environmental Protection Agency.

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

Senator Rogers moved that the rule be suspended.

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

The question being on the adoption of the concurrent resolution,

Senator Rogers moved that the concurrent resolution be referred to the Committee on Farming, Agribusiness and Food Systems.

The motion prevailed.

Senators Stille and Shugars were named co-sponsors of the concurrent resolution.

Senators McManus, Bennett, Gougeon, Sikkema, Goschka, Rogers, Dingell, Byrum, Leland, Cherry and V. Smith offered the following resolution:

Senate Resolution No. 102.

A resolution to urge the United States Environmental Protection Agency to make its regulatory decisions under the Food Quality Protection Act on the basis of sound science and to approve the use of certain products.

Whereas, The Environmental Protection Agency (EPA) is in the process of making regulatory decisions under the provisions of the Food Quality Protection Act of 1996. This review process, which involves seeking public comment, requires the EPA to consider the impact, uses, benefits, and risks of a host of chemicals available for use at various stages of growing and processing agricultural products; and

Whereas, One of the first classes of pesticides the EPA is reviewing is organophosphate insecticides. This group of compounds includes chlorpyrifos, the active ingredient in Lorsban, a widely used insecticide that is important to Michigan agriculture and a well-respected tool for many farmers; and

Whereas, In its review, the EPA should base its decision and set tolerance levels in response to scientific data reflecting real-world use of the products. The standards should not be based on hypothetical situations. Determinations should be based on a weight of evidentiary evaluation of all scientific data provided. The EPA should avoid overly conservative decisions that put Michigan and growers across the United States at a competitive disadvantage to producers of other nations. In addition, the review process must also include full information on the extent that the various products contribute to the success of modern farming; and

Whereas, Chlorpyrifos is an important tool in the effort to control pests in agriculture. Its use and impact are supported by a large body of scientific data. Those who rely on this material in their operations worry that federal decision-making agencies may not understand fully the extent of the use and the importance of this material; now, therefore, be it

Resolved by the Senate, That we urge the United States Environmental Protection Agency to make its regulatory decisions under the Food Quality Protection Act on the basis of sound science and to approve the use of chlorpyrifos products; and be it further

Resolved, That a copy of this resolution be transmitted to the United States Environmental Protection Agency.

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

Senator Rogers moved that the rule be suspended.

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

The question being on the adoption of the resolution,

Senator Rogers moved that the resolution be referred to the Committee on Farming, Agribusiness and Food Systems.

The motion prevailed.

Senators Stille and Shugars were named co-sponsors of the resolution.

House Concurrent Resolution No. 71.

A concurrent resolution prescribing the legislative schedule.

Resolved by the House of Representatives (the Senate concurring), That when the House of Representatives adjourns on Wednesday, November 10, 1999, it stand adjourned until Tuesday, November 30, 1999, at 12:00 Noon; and be it further

Resolved, That when the Senate adjourns on Wednesday, November 10, 1999, it stand adjourned until Tuesday, November 30, 1999, at 10:00 a.m.

The House of Representatives has adopted the concurrent resolution.

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

Senator Rogers moved that the rule be suspended.

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

The concurrent resolution was adopted.

Senator Rogers moved that rule 2.106 be suspended to allow the Committee on Appropriations to meet during Senate session.

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

By unanimous consent the Senate proceeded to the order of

Statements

Senator Jaye asked and was granted unanimous consent to make a statement and moved that the statement be printed in the Journal.

The motion prevailed.

Senator Jaye's statement is as follows:

Senate colleagues, on the eleventh hour of the eleventh day of the eleventh month, World War I ended, and that's the day that we choose to celebrate Veterans Day. My pop is a Marine, and many of my family members served in the

military. We recently had a House colleague whose father was a veteran, and the family went to the expenses of burying their father, and in my estimation, also faced the insult of having to pay a sales tax on all the burial services, the casket, and other items to give their father a burial.

This Senate, I believe, passed unanimously my legislation that would exempt from the state sales tax burial items for veterans. I would call upon the House, out of respect and appreciation for the sacrifices of the armed services men and women and their families, to very rapidly and speedily pass the legislation, so that we don't have a death tax, as it is, on the veterans and their surviving family members in the state of Michigan.

I also wish my colleagues good success and good hunting as we approach an informal holiday in Michigan. November 15 marks the opening day of firearm season in Michigan, and as the chairman of the Hunting, Fishing and Forestry Committee, I want to remind those who are not necessarily in favor of hunting of a very, very appropriate sermon that was mentioned by a clergy member in Macomb County: "All God's creatures are beautiful. It's just that some are more tasty than others."

On a serious note, the number of car/deer accidents has led to four deaths, over 2,800 injuries, and a cost of $100 million in damages to cars—$100 million! The body shops say at a low end the damage from a deer/car impact is approximately $1,600.00 and at the high end $6,000.00. The deer herd in Michigan is healthy. In fact, there are more deer now than at the time when the Europeans first arrived in the Michigan area.

We have a situation where the hunters, the men and women, who are going to be in the woods are both Michigan residents and guests, the tourists. We're at the top of the food chain. We're the predators. We are the folks who maintain the balance because if we allow the deer to continue in population beyond the biologically suitable amount, then it leads to starvation, which is a horrible, cruel situation to place deer in. But it also leads to the eradication and the extinction of plant life and other animals that make up our rich bio-diversity in the great state of Michigan.

So as we break in recess for the state, I'm including the message for at least the Thanksgiving and the hunting break. I'm reminded of the phrase that a person's life, liberty, and property are never safe while the Legislature is in session. Certainly, the taxpayers will be safe for the next few weeks here in Michigan.

By unanimous consent the Senate returned to the order of

Introduction and Referral of Bills

Senators Hammerstrom, Dunaskiss, North, Shugars, Schuette, McManus and Koivisto introduced

Senate Bill No. 886, entitled

A bill to amend 1991 PA 179, entitled "Michigan telecommunications act," by amending section 304a (MCL 484.2304a), as added by 1995 PA 216.

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

Senator Dingell introduced

Senate Bill No. 887, entitled

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending section 5805 (MCL 600.5805), as amended by 1988 PA 115, and by adding sections 2981, 2982, 2983, 2984, 2985, 2986, 2987, 2988, 2989, 2990, 2991, and 2992; 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 Judiciary.

Senator Schwarz introduced

Senate Bill No. 888, entitled

A bill to amend 1975 PA 228, entitled "Single business tax act," by amending section 39c (MCL 208.39c), as added by 1998 PA 534.

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

Senator Schwarz introduced

Senate Bill No. 889, entitled

A bill to amend 1967 PA 281, entitled "Income tax act of 1967," by amending section 266 (MCL 206.266), as added by 1998 PA 535.

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

House Bill No. 5008, entitled

A bill to amend 1945 PA 246, entitled "An act to authorize township boards to adopt ordinances and regulations to secure the public health, safety and general welfare; to provide for the establishment of a township police department; to provide for policing of townships by certain law enforcement officers and agencies; to provide for the publication

of ordinances; to prescribe powers and duties of township boards and certain local and state officers and agencies; to provide sanctions; and to repeal all acts and parts of acts in conflict with the act," by amending sections 1, 4, and 5 (MCL 41.181, 41.184, and 41.185), section 1 as amended by 1994 PA 315, section 4 as amended by 1994 PA 14, and section 5 as added by 1989 PA 78.

The House of Representatives has passed the bill and ordered that it be given immediate effect.

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

House Bill No. 5009, entitled

A bill to amend 1909 PA 278, entitled "The home rule village act," by amending section 23 (MCL 78.23), as amended by 1982 PA 373.

The House of Representatives has passed the bill and ordered that it be given immediate effect.

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

House Bill No. 5010, entitled

A bill to amend 1895 PA 3, entitled "The general law village act," by amending section 4 of chapter VI (MCL 66.4), as amended by 1998 PA 255.

The House of Representatives has passed the bill and ordered that it be given immediate effect.

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

House Bill No. 5016, entitled

A bill to amend 1909 PA 279, entitled "The home rule city act," by amending section 3 (MCL 117.3), as amended by 1993 PA 207.

The House of Representatives has passed the bill and ordered that it be given immediate effect.

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

House Bill No. 5053, entitled

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending section 43534 (MCL 324.43534), as added by 1995 PA 57.

The House of Representatives has passed the bill and ordered that it be given immediate effect.

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

Scheduled Meetings

Natural Resources Appropriations Subcommittee - Tuesday, November 30, at 2:00 p.m., Senate Appropriations Room, 3rd Floor, Capitol Building (3-1725).

Transportation Appropriations Subcommittee - Tuesday, December 7, at 2:30 p.m., Senate Appropriations Room, 3rd Floor, Capitol Building (3-2426).

Senator Rogers moved that the Senate adjourn.

The motion prevailed, the time being 12:57 p.m.

Pursuant to House Concurrent Resolution No. 71, the President pro tempore, Senator Schwarz, declared the Senate adjourned until Tuesday, November 30, at 10:00 a.m.

CAROL MOREY VIVENTI
Secretary of the Senate.