

No. 84
STATE OF MICHIGAN
Journal of the Senate
92nd Legislature
REGULAR SESSION OF 2003

Senate Chamber, Lansing, Tuesday, October 14, 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—excused
Brown—present
Cassis—present
Cherry—present
Clark-Coleman—present
Clarke—excused
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—present
McManus—present

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

Senator Gilda Z. Jacobs of the 14th District offered the following invocation:

Today I bring words from a sixth century Chinese philosopher, Lao-Tse:

“If there is to be peace in the world, there must be peace in the nations.

If there is to be peace in the nations, there must be peace in the cities.

If there is to be peace in the cities, there must be peace between neighbors.

If there is to be peace between neighbors, there must be peace in the home.

If there is to be peace in the home, there must be peace in the heart.”

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

Motions and Communications

Senator Hammerstrom moved that Senators Allen and Cropsey be temporarily excused from today’s session.
The motion prevailed.

Senator Hammerstrom moved that Senator Toy be excused from today’s session.
The motion prevailed.

Senator Schauer moved that Senators Brater and Clarke be excused from today’s session.
The motion prevailed.

The following communication was received:
Department of State Police

September 30, 2003

I am pleased to submit the 2002-2003 Concealed Pistol License Annual Report as required by MCL 28.425e of Public Act 381 of 2000. This report details the concealed pistol license activity between July 1, 2002 and June 30, 2003.

Sincerely,
Col. Tadarial J. Sturdivant
Director

The communication was referred to the Secretary for record.

The following communications were received:
Office of Auditor General

October 1, 2003

Enclosed is a copy of the following audit report:
Performance Audit of the Forensic Science Division, Michigan Department of State Police, released October 1, 2003.

October 6, 2003

Enclosed is a copy of the following audit report:
Performance Audit of the Bureau of Regulatory Services, Department of State, released October 6, 2003.

October 7, 2003

Enclosed is a copy of the following audit report:
Performance Audit of the Office of Career and Technical Preparation, Michigan Department of Career Development, released October 7, 2003.

Sincerely,
Thomas H. McTavish, C.P.A.
Auditor General

The communications were referred to the Secretary for record.

The following communication was received:
Schoolcraft College

October 8, 2003

As required, we are enclosing a copy of the audited financial statements and the management letter for Schoolcraft College for the fiscal year ended June 30, 2003.

Sincerely,
Jill F. O'Sullivan
Vice President for Finance and Business Services

The communication was referred to the Secretary for record.

The Secretary announced that the following House bills were received in the Senate and filed on Thursday, October 9:
House Bill Nos. 4319 5054 5086

The Secretary announced that the following bills were available at the legislative Web site on Thursday, October 9:
Senate Bill Nos. 762 763 764 765 766 769
House Bill Nos. 5143 5144 5145 5146 5147

The Secretary announced that the following bills were available at the legislative Web site on Friday, October 10:
Senate Bill Nos. 767 768 770 771
House Bill Nos. 5148 5149 5150 5151 5152 5153 5154

Messages from the Governor

Senator Hammerstrom moved that consideration of the following bills be postponed for today:

Senate Bill No. 195
Senate Bill No. 364
Senate Bill No. 293
Senate Bill No. 265
Senate Bill No. 288
Senate Bill No. 540
Senate Bill No. 283
Senate Bill No. 464
Senate Bill No. 466

The motion prevailed.

The following message from the Governor was received and read:

HEALTH; ABORTION; CLARIFY DEFINITION OF LEGAL BIRTH

October 10, 2003

As provided by Article IV, Section 33 of the Michigan Constitution of 1963, today I return with my objections Enrolled Senate Bill 395. I do so because federal courts repeatedly have declared unconstitutional efforts to end partial birth abortion, and Senate Bill 395 does not remedy deficiencies identified by the courts.

The U.S. Supreme Court and a series of other appellate courts have specifically ruled that a ban on partial birth abortion must include an exception for the life and health of the mother.¹ This bill does not contain that clear exception. In fact, the Michigan State Medical Society and the American College of Obstetricians and Gynecologists both strongly oppose this bill since it does not contain a valid exception for the health of the mother and it easily could be interpreted to outlaw even first trimester abortions.

I am very aware that the abortion debate remains one of the most emotional and highly charged of our times. While those on both sides of this issue may not be able to agree on the state's role in the abortion question, surely we can find some common ground in reducing the demand for abortion. I would hope we could work together, in a bipartisan fashion, to prevent unwanted pregnancies and remove barriers to adoption. I stand ready to lead in these efforts and ask proponents from both sides of the debate to join me.

Respectfully,
Jennifer M. Granholm
Governor

¹In Stenberg v Carhart, 530 US 914, 120 S Ct 2597, 147 L Ed2d 743 (2000), Justice O'Connor wrote that the challenged Nebraska statute was unconstitutional "because it lacks an exception for those instances when the banned procedure is necessary to preserve the health of the mother." id., at 947; 120 S Ct 2618.

This bill was returned from the Governor on October 10, 2003, at 4:04 p.m.
The question being on the passage of the bill, the objections of the Governor to the contrary notwithstanding, Senator Hammerstrom moved that further consideration of the bill be postponed for today.
The motion prevailed.

Senator Emerson entered the Senate Chamber.

By unanimous consent the Senate proceeded to the order of
General Orders

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

The motion prevailed, and the President, Lieutenant Governor Cherry, designated Senator George as Chairperson.

After some time spent therein, the Committee arose; and, the President, Lieutenant Governor Cherry, having resumed the Chair, the Committee reported back to the Senate, favorably and without amendment, the following bill:

Senate Bill No. 718, entitled

A bill to amend 1996 PA 381, entitled "Brownfield redevelopment financing act," by amending section 15 (MCL 125.2665), as amended by 2002 PA 727.

The bill 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:

House Bill No. 4360, entitled

A bill to amend 1978 PA 33, entitled "An act to prohibit the dissemination, exhibiting, or displaying of certain sexually explicit matter to minors; to prohibit certain misrepresentations facilitating the dissemination of sexually explicit matter to minors; to provide penalties; to provide for declaratory judgments and injunctive relief in certain instances; to impose certain duties upon prosecuting attorneys and the circuit court; to preempt local units of government from proscribing certain conduct; and to repeal certain acts and parts of acts," by amending sections 1, 3, 5, 6, and 7 (MCL 722.671, 722.673, 722.675, 722.676, and 722.677), sections 3, 5, 6, and 7 as amended by 1999 PA 33; and to repeal acts and parts of acts.

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.

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

Senate Bill No. 658, entitled

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," (MCL 324.101 to 324.90106) by adding section 80134a.

The following are the amendments recommended by the Committee of the Whole:

1. Amend page 2, following line 4, by inserting:

"(4) As used in this section, "serious impairment of a body function" means that term as defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c".

2. Amend page 2, following line 4, by inserting:

"Enacting section 1. This amendatory act takes effect January 31, 2004."

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

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

Senate Bill No. 659, entitled

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

The following is the amendment recommended by the Committee of the Whole:

1. Amend page 4, following line 15, by inserting:

"Enacting section 1. This amendatory act takes effect January 31, 2004." and renumbering the remaining enacting section.

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

During the Committee of the Whole, Senators Cropsey and Allen entered the Senate Chamber.

By unanimous consent the Senate proceeded to the order of
Introduction and Referral of Bills

Senators Stamas, Patterson, Hammerstrom, Johnson, Jacobs, Cherry and George introduced

Senate Bill No. 772, entitled

A bill to amend 1974 PA 258, entitled "Mental health code," (MCL 330.1001 to 330.2106) by adding section 709. The bill was read a first and second time by title and referred to the Committee on Health Policy.

Senator Thomas introduced

Senate Bill No. 773, entitled

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending section 145c (MCL 750.145c), as amended by 2002 PA 629.

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

Senators Bernero, Olshove, Prusi, Allen, Bishop, Schauer, George, Switalski, Clark-Coleman, Goschka and Jacobs introduced

Senate Bill No. 774, entitled

A bill to amend 1986 PA 281, entitled "The local development financing act," by amending section 21a (MCL 125.2162a), as amended by 2002 PA 575.

The bill was read a first and second time by title and referred to the Committee on Economic Development, Small Business and Regulatory Reform.

Senators Brown, Switalski and Allen introduced

Senate Bill No. 775, entitled

A bill to amend 1975 PA 228, entitled "Single business tax act," (MCL 208.1 to 208.145) by adding section 37e.

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

Senators Brown, Switalski and Allen introduced

Senate Bill No. 776, entitled

A bill to amend 1967 PA 281, entitled "Income tax act of 1967," (MCL 206.1 to 206.532) by adding section 270.

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

Senator George introduced

Senate Bill No. 777, entitled

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending section 16t of chapter XVII (MCL 777.16t), as amended by 2000 PA 371.

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

House Bill No. 4319, entitled

A bill to designate March 31 of each year as Cesar E. Chavez day in the state of Michigan.

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 Local, Urban and State Affairs.

House Bill No. 5054, entitled

A bill to amend 1980 PA 299, entitled "Occupational code," by amending section 1117 (MCL 339.1117), as amended by 1984 PA 25.

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 Economic Development, Small Business and Regulatory Reform.

House Bill No. 5086, entitled

A bill to amend 1954 PA 116, entitled "Michigan election law," by amending sections 497, 759, and 759a (MCL 168.497, 168.759, and 168.759a), section 497 as amended by 1989 PA 142, section 759 as amended by 1995 PA 261, and section 759a as amended by 1999 PA 216; and to repeal acts and parts of acts.

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 Government Operations.

Committee Reports

The Committee on Technology and Energy reported

Senate Resolution No. 162.

A resolution to memorialize the President and the Congress of the United States to increase funding available for home heating assistance to cope with the rise in natural gas costs expected this winter.

(For text of resolution, see Senate Journal No. 79, p. 1726.)

With the recommendation that the following substitute (S-2) be adopted and that the resolution then be adopted:

A resolution to memorialize the President and the Congress of the United States to increase funding available for home heating assistance to cope with the rise in natural gas costs expected this winter.

Whereas, For a variety of reasons, natural gas prices have risen significantly over the past year. These reasons include increasing demand for natural gas and declining production in both the United States and Canada. While this increase in cost has already exacted a toll in many areas of our national economy, the full impact has yet to be felt. This winter, when seasonal demand reaches its peak, costs are expected to strike a terrible blow to people who have had difficulties paying their home heating bills even before the recent increase in prices; and

Whereas, For many years, utilities and their customers have supplemented governmental programs through various heating assistance initiatives. However, public and private programs offering help to low-income families trying to heat their residences are already stretched thin. This winter's situation is expected to bring a crisis to many people, including the low-income seniors who will almost surely face difficult choices; and

Whereas, With summer prices of natural gas at near record highs, Michigan's Public Service Commission has warned that homeowners could expect increases of \$30 a month or more if the winter is severely cold. Gas companies in Michigan and across the country are urging their customers to take steps to prepare for the winter's costs, including weatherization and budgeting. Another key part of dealing with this problem will be for Congress to significantly increase funding available to help state programs for low-income residents; and

Whereas, There are discussions under way in Congress over proposals to address this issue, including increasing the authorization funding level for the Low-Income Home Energy Assistance Program to at least \$3 billion. Clearly, such actions to bring home heating help are in order; now, therefore, be it

Resolved by the Senate, That we memorialize the President and the Congress of the United States to increase funding available for home heating assistance to cope with the rise in natural gas costs expected this winter; and be it further

Resolved, That copies of this resolution be transmitted to the Office of President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

Bruce Patterson
Chairperson

To Report Out:

Yeas: Senators Patterson, Birkholz, Brown, Cassis and Olshove

Nays: None

The resolution and the substitute recommended by the committee were placed on the order of Resolutions.

COMMITTEE ATTENDANCE REPORT

The Committee on Technology and Energy submitted the following:

Meeting held on Wednesday, October 8, 2003, at 3:00 p.m., Room 210, Farnum Building

Present: Senators Patterson (C), Birkholz, Brown, Cassis, Olshove, Leland and Bernero

Excused: Senator Toy

The Committee on Local, Urban and State Affairs reported

Senate Bill No. 687, entitled

A bill to amend 1973 PA 139, entitled "An act to provide forms of county government; to provide for county managers and county executives and to prescribe their powers and duties; to abolish certain departments, boards, commissions, and authorities; to provide for transfer of certain powers and functions; to prescribe powers of a board of county commissioners and elected officials; to provide organization of administrative functions; to transfer property; to retain ordinances and laws not inconsistent with this act; to provide methods for abolition of a unified form of county government; and to prescribe penalties and provide remedies," by amending sections 9 and 10 (MCL 45.559 and 45.560), section 9 as amended by 1980 PA 100, and by adding section 9a.

With the recommendation that the bill pass.

The committee further recommends that the bill be given immediate effect.

Laura M. Toy
Chairperson

To Report Out:

Yeas: Senators Toy, Goschka and Bernero

Nays: None

The bill was referred to the Committee of the Whole.

The Committee on Local, Urban and State Affairs reported

Senate Bill No. 742, entitled

A bill to amend 1972 PA 230, entitled "Stille-DeRossett-Hale single state construction code act," (MCL 125.1501 to 125.1531) by adding section 4c.

With the recommendation that the bill pass.

The committee further recommends that the bill be given immediate effect.

Laura M. Toy
Chairperson

To Report Out:

Yeas: Senators Toy, Goschka, Basham and Bernero

Nays: None

The bill was referred to the Committee of the Whole.

The Committee on Local, Urban and State Affairs reported

Senate Bill No. 476, entitled

A bill to amend 1989 PA 24, entitled "The district library establishment act," by amending section 25 (MCL 397.195), as amended by 2002 PA 540; and to repeal acts and parts of acts.

With the recommendation that the substitute (S-1) be adopted and that the bill then pass.

The committee further recommends that the bill be given immediate effect.

Laura M. Toy
Chairperson

To Report Out:

Yeas: Senators Toy, Goschka, Basham and Bernero

Nays: None

The bill and the substitute recommended by the committee were referred to the Committee of the Whole.

COMMITTEE ATTENDANCE REPORT

The Committee on Local, Urban and State Affairs submitted the following:

Meeting held on Thursday, October 9, 2003, at 1:00 p.m., Room 110, Farnum Building

Present: Senators Toy (C), Goschka, Basham and Bernero

Excused: Senator Birkholz

The Committee on Education reported

Senate Bill No. 482, entitled

A bill to amend 1976 PA 451, entitled "The revised school code," by amending section 1274a (MCL 380.1274a), as amended by 1990 PA 227.

With the recommendation that the following amendment be adopted and that the bill then pass:

1. Amend page 2, following line 12, by inserting:

“(2) A school board or intermediate school board that contracts for energy conservation improvements under subsection (1) may require the qualified provider to furnish a bond that guarantees energy cost savings for a specified period of time.” and renumbering the remaining subsections.

The committee further recommends that the bill be given immediate effect.

Wayne Kuipers
Chairperson

To Report Out:

Yeas: Senators Kuipers, Cassis, Van Woerkom, Clark-Coleman and Leland

Nays: None

The bill and the amendment recommended by the committee were referred to the Committee of the Whole.

The Committee on Education reported

Senate Bill No. 761, entitled

A bill to amend 1937 PA 306, entitled “An act to promote the safety, welfare, and educational interests of the people of the state of Michigan by regulating the construction, reconstruction, and remodeling of certain public or private school buildings or additions to such buildings, by regulating the construction, reconstruction, and remodeling of buildings leased or acquired for school purposes, and to define the class of buildings affected by this act; to prescribe the powers and duties of certain state agencies and officials; to prescribe penalties for the violation of this act; and to repeal acts and parts of acts,” by amending section 1 (MCL 388.851), as amended by 2002 PA 628.

With the recommendation that the bill pass.

The committee further recommends that the bill be given immediate effect.

Wayne Kuipers
Chairperson

To Report Out:

Yeas: Senators Kuipers, Cassis, Van Woerkom, Clark-Coleman and Leland

Nays: None

The bill was referred to the Committee of the Whole.

COMMITTEE ATTENDANCE REPORT

The Committee on Education submitted the following:

Meeting held on Thursday, October 9, 2003, at 2:00 p.m., Room 210, Farnum Building

Present: Senators Kuipers (C), Cassis, Van Woerkom, Clark-Coleman and Leland

The Committee on Agriculture, Forestry and Tourism reported:

House Bill No. 4790, entitled

A bill to amend 1964 PA 283, entitled “Weights and measures act,” by amending section 28c (MCL 290.628c), as added by 2002 PA 208.

With the recommendation that the bill pass.

The committee further recommends that the bill be given immediate effect.

Gerald Van Woerkom
Chairperson

To Report Out:

Yeas: Senators Van Woerkom, Gilbert, Jelinek and Thomas

Nays: Senator Brater

The bill was referred to the Committee of the Whole.

COMMITTEE ATTENDANCE REPORT

The Committee on Agriculture, Forestry and Tourism submitted the following:

Meeting held on Thursday, October 9, 2003, at 9:00 a.m., Room 110, Farnum Building

Present: Senators Van Woerkom (C), Gilbert, Jelinek, Brater and Thomas

COMMITTEE ATTENDANCE REPORT

The Committee on Finance submitted the following:

Public hearing held on Monday, October 6, 2003, at 10:02 a.m., Holiday Inn, 501 Saginaw Street, Bay City

Present: Senators Cassis (C) and McManus

Excused: Senators Garcia, Thomas and Brater

COMMITTEE ATTENDANCE REPORT

The Committee on Judiciary submitted the following:

Joint meeting held on Tuesday, October 7, 2003, at 8:00 a.m., Room 519, House Office Building

Present: Senators Cropsey (C), Patterson, Schauer and Bernero

Excused: Senators Bishop, Sanborn and Brater

COMMITTEE ATTENDANCE REPORT

The Committee on Agriculture, Forestry and Tourism submitted the following:

Joint meeting held on Tuesday, October 7, 2003, at 1:00 p.m., Senate Appropriations Room, 3rd Floor, Capitol Building

Present: Senators Van Woerkom (C) and Jelinek

Excused: Senators Gilbert, Brater and Thomas

COMMITTEE ATTENDANCE REPORT

The Subcommittee on Agriculture submitted the following:

Joint meeting held on Tuesday, October 7, 2003, at 1:00 p.m., Senate Appropriations Room, 3rd Floor, Capitol Building

Present: Senators Brown (C), Jelinek and Barcia

COMMITTEE ATTENDANCE REPORT

The Committee on Transportation submitted the following:

Meeting held on Tuesday, October 7, 2003, at 1:00 p.m., Room 110, Farnum Building

Present: Senators Gilbert (C), Kuipers, Goschka, Leland and Basham

COMMITTEE ATTENDANCE REPORT

The Committee on Commerce and Labor submitted the following:

Joint meeting held on Tuesday, October 7, 2003, at 3:00 p.m., Senate Appropriations Room, 3rd Floor, Capitol Building

Present: Senators Allen (C), McManus, Schauer and Olshove

Excused: Senator Kuipers

COMMITTEE ATTENDANCE REPORT

The Subcommittee on Commerce, Labor and Economic Development submitted the following:

Joint meeting held on Tuesday, October 7, 2003, at 3:00 p.m., Senate Appropriations Room, 3rd Floor, Capitol Building

Present: Senators Garcia (C), George, Hardiman, Prusi and Scott

COMMITTEE ATTENDANCE REPORT

The Subcommittee on Department of Natural Resources submitted the following:

Meeting held on Wednesday, October 8, 2003, at 12:07 p.m., Senate Appropriations Room, 3rd Floor, Capitol Building

Present: Senators McManus (C), Jelinek, Barcia and Cherry

Excused: Senator Johnson

Scheduled Meetings

Administrative Rules - Thursday, October 16, 11:00 a.m. or later immediately following House and Senate session, Room 424, Capitol Building (373-6476)

Agriculture, Forestry and Tourism - Thursday, October 16, 9:00 a.m., Room 110, Farnum Building (373-1635)

Appropriations -**Subcommittees -**

Environmental Quality Department - Wednesday, October 15, 12:00 noon, Senate Appropriations Room, 3rd Floor, Capitol Building (373-1725)

Natural Resources Department - Thursday, October 16, 12:00 noon, Senate Appropriations Room, 3rd Floor, Capitol Building (373-1725)

Banking and Financial Institutions - Thursday, October 16, 12:00 noon or later immediately following session, Room 100, Farnum Building (373-2417)

Economic Development, Small Business and Regulatory Reform - Wednesday, October 15, 3:00 p.m., Rooms 402 and 403, Capitol Building (373-7670)

Education - Thursday, October 16, 2:00 p.m., Room 210, Farnum Building (373-6920)

Families and Human Services - Thursday, October 16, 8:30 a.m., Room 210, Farnum Building (373-1801)

Finance - Wednesday, October 15, 1:00 p.m., Room 110, Farnum Building (373-1758)

Health Policy - Wednesday, October 15, 1:00 p.m., Senate Hearing Room, Ground Floor, Boji Tower (formerly Michigan National Tower) (373-3543)

Local, Urban and State Affairs - Thursday, October 16, 1:00 p.m., Room 110, Farnum Building (373-1707)

Senior Citizens and Veterans Affairs - Wednesday, October 15, 1:00 p.m., Room 100, Farnum Building (373-1707)

Technology and Energy - Wednesday, October 22, 3:00 p.m., Room 210, Farnum Building (373-7350)

Senator Hammerstrom moved that the Senate adjourn.

The motion prevailed, the time being 10:20 a.m.

The President, Lieutenant Governor Cherry, declared the Senate adjourned until Wednesday, October 15, 2003, at 10:00 a.m.

CAROL MOREY VIVENTI
Secretary of the Senate