

No. 8
STATE OF MICHIGAN
Journal of the Senate
94th Legislature
REGULAR SESSION OF 2008

Senate Chamber, Lansing, Wednesday, January 30, 2008.

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

Garcia—excused
George—present
Gilbert—present
Gleason—present
Hardiman—present
Hunter—present
Jacobs—present
Jansen—present
Jelinek—present
Kahn—present
Kuipers—present
McManus—present
Olshove—present

Pappageorge—present
Patterson—present
Prusi—present
Richardville—present
Sanborn—present
Schauer—present
Scott—present
Stamas—present
Switalski—present
Thomas—present
Van Woerkom—present
Whitmer—present

Senator Martha G. Scott of the 2nd District offered the following invocation:

This is the day that the Lord has made and we shall rejoice in it. "Blessed is the man that walketh not in the counsel of the ungodly, nor standeth in the way of sinners, nor sitteth in the seat of the scornful. But his delight is in the law of the LORD; and in his law doth he meditate day and night. And he shall be like a tree planted by the rivers of water, that bringeth forth his fruit in his season; his leaf also shall not wither; and whatsoever he doeth shall prosper. The ungodly are not so: but are like the chaff which the wind driveth away. Therefore the ungodly shall not stand in the judgment, nor sinners in the congregation of the righteous. For the LORD knoweth the way of the righteous: but the way of the ungodly shall perish."

I have read to you Psalm 1, verses 1-6, and may the Lord add a blessing to the hearing and reading of His word. Amen.

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

Motions and Communications

Senator Cropsey moved that Senator Garcia be excused from today's session.
The motion prevailed.

Senator Cropsey moved that the rules be suspended and that the following bills, now on Committee Reports, be placed on the General Orders calendar for consideration today:

Senate Bill No. 954

Senate Bill No. 955

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

Senator Cropsey moved that the Committee on Government Operations and Reform be discharged from further consideration of the following appointment:

Director of the Department of Information Technology

Mr. Kenneth D. Theis of 6535 South Airport Road, St. Johns, Michigan 48879, county of Clinton, succeeding Teresa M. Takai, appointed for a term commencing January 1, 2008 and expiring at the pleasure of the Governor.

The motion prevailed, a majority of the members serving voting therefor, and the appointment was placed on the order of Messages from the Governor.

Senators Clarke and Sanborn entered the Senate Chamber.

By unanimous consent the Senate proceeded to the order of

Messages from the Governor

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

Senate Bill No. 436

Senate Bill No. 222

Senate Bill No. 229

Senate Bill No. 232

Senate Bill No. 238

Senate Bill No. 240

The motion prevailed.

The following message from the Governor was received and read:

January 29, 2008

I respectfully submit to the Senate, pursuant to Section 6 of Article 5 of the Michigan Constitution of 1963, the following appointment and reappointments to state office under Section 4 of the Michigan Gaming Control and Revenue Act, Initiated Law of 1996, MCL 432.204:

Michigan Gaming Control Board

Mr. Michael J. Watzka, a Republican, of 21916 Bedford Drive, Northville, Michigan 48167, county of Oakland, succeeding the Honorable Michael L. Stacey, whose term has expired, appointed for a term commencing January 29, 2008 and expiring December 31, 2010.

The Honorable Benjamin J. Friedman, a Democrat, of 25105 East Roycourt, Huntington Woods, Michigan 48070, county of Oakland, reappointed for a term expiring December 31, 2011.

Ms. Barbara J. Rom, a Democrat, of 60 Quarton Lane, Bloomfield Hills, Michigan 48304, county of Oakland, reappointed for a term expiring December 31, 2011.

Sincerely,
Jennifer M. Granholm
Governor

The appointments were referred to the Committee on Government Operations and Reform.

Director of the Department of Information Technology

Mr. Kenneth D. Theis of 6535 South Airport Road, St. Johns, Michigan 48879, county of Clinton, succeeding Teresa M. Takai, appointed for a term commencing January 1, 2008 and expiring at the pleasure of the Governor.

Senator Cropsey moved that the Senate advise and consent to the appointment.

The question being on advising and consenting to the said appointment to office,

The Senate advised and consented to the appointment, a majority of the members serving voting therefor, as follows:

Roll Call No. 24

Yeas—37

Allen	Clark-Coleman	Jansen	Richardville
Anderson	Clarke	Jelinek	Sanborn
Barcia	Cropsey	Kahn	Schauer
Basham	George	Kuipers	Scott
Birkholz	Gilbert	McManus	Stamas
Bishop	Gleason	Olshove	Switalski
Brater	Hardiman	Pappageorge	Thomas
Brown	Hunter	Patterson	Van Woerkom
Cassis	Jacobs	Prusi	Whitmer
Cherry			

Nays—0

Excused—1

Garcia

Not Voting—0

In The Chair: President

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

The motion prevailed.

Senator Switalski's statement is as follows:

I rise in support of Kenneth Theis, and I would just like to say that he has some very big shoes to fill. Teresa Takai did a tremendous job for this state and really created a great department with a great reputation nationally. She was stolen from us by the state of California, triple our size, and that is good for California—good for them. We are lucky to have someone like Mr. Theis, who was part of that team, to step in and take over. I look forward to working with him and even advancing his reputation.

By unanimous consent the Senate proceeded to the order of
Third Reading of Bills

Senator Cropsey moved that the following bill be placed at the head of the Third Reading of Bills calendar:

Senate Bill No. 591

The motion prevailed.

The following bill was read a third time:

Senate Bill No. 591, entitled

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," (MCL 600.101 to 600.9947) by adding chapter 30.

The question being on the passage of the bill,

Senator Whitmer offered the following amendment:

1. Amend page 3, following line 20, by inserting:

"(D) CLAIMS AGAINST A SUCCESSOR THAT IS UNABLE TO DEMONSTRATE BY A PREPONDERANCE OF THE EVIDENCE THAT BEFORE THE RELEVANT MERGER OR CONSOLIDATION, PLAN OF MERGER OR CONSOLIDATION, OR EXERCISE OF CONTROL OR OWNERSHIP OF STOCK THE SUCCESSOR ENGAGED IN A REASONABLY DILIGENT INQUIRY WITH REGARD TO THE POTENTIAL LIABILITIES OF THE TRANSFEROR FROM WHICH IT ACQUIRED ITS SUCCESSOR ASBESTOS-RELATED LIABILITY. WHETHER THERE IS SUFFICIENT EVIDENCE OF A DILIGENT INQUIRY MAY BE DETERMINED BY THE COURT IF THERE IS NO GENUINE ISSUE OF MATERIAL FACT, OR BY THE TRIER OF FACT IF THERE IS A GENUINE ISSUE OF MATERIAL FACT."

The question being on the adoption of the amendment,

Senator Cropsey moved that further consideration of the bill be postponed for today.

The motion prevailed.

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

The motion prevailed.

Senator Gleason's statement is as follows:

I may not be the only one in this chamber who worked around asbestos, but I did work around asbestos. When I was just starting my career, I was working at the Karn and Weadock Plant in Essexville. The turbine was covered with a tremendous amount of asbestos-laden insulation to keep the temperature under some control in that turbine room.

We were sent in to remove that insulation so that we could rebuild the turbine in the powerhouse. While we were tearing the insulation out, we weren't made known of any of the concerns with asbestos at that time. No protective equipment that we could be advised to wear, no respirators, no protective clothing; we weren't insulated from that deadly substance by any means, the least of which would have been notice that the substance we were working in was potentially deadly.

Now my union brothers and sisters have worked under those conditions, and it was quite unique in that after I had experienced that, a few years later, all of a sudden they started roping off the areas that we had worked in in automobile factories and other plants and facilities around the state. They would rope off an area, maybe 100 feet, with only a yellow cautionary tape. The workers all of a sudden started showing up in equipment completely covering their bodies, giving them some relief with respirators. But we worked in that environment after OSHA was fully aware of what had transpired, and I believe there is some documentation that those who were in the manufacturing of asbestos knew this many, many decades before OSHA was able to weigh in and curtail some of these practices.

We still have several buildings across this state that still have asbestos in them. I commend the sponsor of this amendment for speaking out on behalf of those who not only have to work in the construction industry, but have to go to work every single day in some of these facilities that we are still utilizing. Many of us know that we have schools in our Senate districts that still have asbestos in them and we are trying to remediate these schools, making them more technology-friendly and updating them with expansions and reconstructions in the facilities themselves.

I hope that we look at this very cautiously. Even though OSHA has established rules and regulations that our workers must work under, there has been a haphazard enforcement of those regulations, from OSHA in particular. Many times our OSHA regulations go before the NLRB asking for support from the federal government, and I would caution us all to look at the recent history of NLRB to see if they are more concerned about the profits of our major corporations.

I think we should support this amendment because it is ultimately in support of Michigan workers and Michigan taxpayers. We send workers into these public facilities such as schools, in the final analysis, who will be picking up the damages for these injuries and deaths.

I ask the Senate to take a responsible action and support this amendment.

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

Senator Cropsey 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 Allen 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 with a substitute therefor, the following bill:

Senate Bill No. 954, entitled

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending section 387 (MCL 750.387), as amended by 1998 PA 311.

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 a substitute therefor, the following bill:

Senate Bill No. 955, entitled

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending section 16s of chapter XVII (MCL 777.16s), as amended by 2005 PA 106.

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.

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

Senators Pappageorge, Gilbert, McManus, Brown, Hunter, Kahn and Thomas introduced

Senate Bill No. 1066, entitled

A bill to amend 1949 PA 300, entitled "Michigan vehicle code," by amending sections 320a and 743 (MCL 257.320a and 257.743), section 320a as amended by 2004 PA 495 and section 743 as amended by 2006 PA 298, and by adding section 320d.

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

Senators Hunter, Clarke and Brater introduced

Senate Bill No. 1067, entitled

A bill to amend 2002 PA 660, entitled "Consumer mortgage protection act," by amending section 4 (MCL 445.1634).

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

Statements

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

The motion prevailed.

Senator Scott's statement is as follows:

I rise today to share with you the wisdom of one Frank Yerby, a highly-respected African American historical novelist who once observed, "Greatness has nothing to do with goodness." Now I suspect that this news might disappoint some of you who erroneously thought that because you were in a position of power and influence, you were automatically doing good things. But your inaction with the insurance issue demonstrates otherwise. Goodness would suggest recognizing injustice and taking action upon it. Goodness would demand an effort to end discriminatory actions. Goodness would dictate a strong stand against greedy insurance companies reaping huge profits on the backs of the poor.

I know I stand today in the company of greatness. My hope is that someday I will stand in the company of goodness as well. It will begin when you move my bills.

Senator Hardiman stated that had he been present on January 24 when the votes were taken on the passage of the following bills, he would have voted “yea”:

House Bill No. 5123

House Bill No. 5101

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

Committee Reports

The Committee on Judiciary reported

Senate Bill No. 865, entitled

A bill to amend 1961 PA 236, entitled “Revised judicature act of 1961,” by amending sections 5805 and 5839 (MCL 600.5805 and 600.5839), section 5805 as amended by 2002 PA 715 and section 5839 as amended by 1985 PA 188.

With the recommendation that the substitute (S-3) be adopted and that the bill then pass.

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

Wayne Kuipers
Chairperson

To Report Out:

Yeas: Senators Kuipers, Cropsey, Sanborn, Patterson and Prusi

Nays: Senator Whitmer

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

The Committee on Judiciary reported

Senate Bill No. 954, entitled

A bill to amend 1931 PA 328, entitled “The Michigan penal code,” by amending section 387 (MCL 750.387), as amended by 1998 PA 311.

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.

Wayne Kuipers
Chairperson

To Report Out:

Yeas: Senators Kuipers, Cropsey, Sanborn, Patterson, Whitmer, Clarke and Prusi

Nays: None

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

The Committee on Judiciary reported

Senate Bill No. 955, entitled

A bill to amend 1927 PA 175, entitled “The code of criminal procedure,” by amending section 16s of chapter XVII (MCL 777.16s), as amended by 2005 PA 106.

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.

Wayne Kuipers
Chairperson

To Report Out:

Yeas: Senators Kuipers, Cropsey, Sanborn, Patterson, Whitmer, Clarke and Prusi

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 Judiciary submitted the following:

Meeting held on Tuesday, January 29, 2008, at 1:00 p.m., Room 210, Farnum Building

Present: Senators Kuipers (C), Cropsey, Sanborn, Patterson, Whitmer, Clarke and Prusi

COMMITTEE ATTENDANCE REPORT

The Subcommittee on Retirement submitted the following:

Meeting held on Tuesday, January 29, 2008, at 12:00 noon, Room 110, Farnum Building

Present: Senators Jansen (C), Kahn and Cherry

COMMITTEE ATTENDANCE REPORT

The Committee on Homeland Security and Emerging Technologies submitted the following:

Meeting held on Tuesday, January 29, 2008, at 1:00 p.m., Room 100, Farnum Building

Present: Senators Brown (C), Richardville, Pappageorge, Hunter, Olshove and Thomas

Excused: Senator Garcia

Scheduled Meetings

Agriculture - Thursday, January 31, 9:00 a.m., Room 110, Farnum Building (373-1635)

Appropriations -**Subcommittees -**

Community Health Department - Thursdays, February 14, February 21 and February 28, 1:00 p.m., and March 13, 2:00 p.m., Senate Hearing Room, Ground Floor, Boji Tower (373-2768)

Environmental Quality Department - Tuesdays, February 5 (CANCELED) and February 12, 3:00 p.m., Senate Appropriations Room, 3rd Floor, Capitol Building (373-2768)

Higher Education - Tuesday, February 19, 1:00 p.m., Michigan State University, Radiology Building, 184 Service Road, East Lansing; Friday, February 22, 10:30 a.m., Alma College, Tyler-Van Dusen Campus Center, 614 W. Superior Street, Alma; Monday, February 25, 10:00 a.m., Grand Valley State University, Cook-DeVos Center for Health Sciences, 301 Michigan Street NE, Grand Rapids; and Monday, March 3, 10:00 a.m., University of Michigan-Dearborn, Institute for Advanced Vehicle Systems Building, Borg Warner Auditorium, 4901 Evergreen Road, Dearborn (373-2768)

Higher Education and Community Colleges, and House Higher Education and Community Colleges Appropriations Subcommittees - Thursday, January 31, 3:00 p.m., Senate Appropriations Room, 3rd Floor, Capitol Building (373-2768)

K-12, School Aid, Education - Tuesdays, February 19, February 26, March 4 and March 11, 2:00 p.m., Senate Appropriations Room, 3rd Floor, Capitol Building (373-2768)

State Police and Military Affairs - Wednesday, February 6, 2:00 p.m., Room 100, Farnum Building (CANCELED); and Thursday, February 14, 9:00 a.m., Rooms 402 and 403, Capitol Building (373-2768)

Appropriations, Senate/House - Thursday, February 7, 11:00 a.m., House Appropriations Room, 3rd Floor, Capitol Building (373-6960)

Energy Policy and Public Utilities - Thursday, January 31, 1:00 p.m., Room 210, Farnum Building (373-7350)

Finance - Thursday, January 31, 10:30 a.m. or later immediately following session, Room 110, Farnum Building (373-1758)

Legislative Retirement Board of Trustees -**Subcommittee -**

Investment - Friday, February 1, 11:00 a.m., Room 927, South Tower, House Office Building (373-0575)

Natural Resources and Environmental Affairs - Wednesday, February 6, 1:00 p.m., Room 110, Farnum Building (373-3447)

Transportation - Thursday, January 31, 1:00 p.m., Rooms 402 and 403, Capitol Building (373-7708)

Senator Cropsey moved that the Senate adjourn.
The motion prevailed, the time being 10:34 a.m.

The President pro tempore, Senator Richardville, declared the Senate adjourned until Thursday, January 31, 2008, at 10:00 a.m.

CAROL MOREY VIVENTI
Secretary of the Senate