

No. 3
JOURNAL OF THE SENATE

Senate Chamber, Lansing, Wednesday, January 29, 1997.

10:00 a.m.

The Senate was called to order by the President, Lieutenant Governor Connie B. Binsfeld.

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

Bennett—present
Berryman—present
Bouchard—present
Bullard—excused
Byrum—present
Carl—present
Cherry—present
Cisky—present
Conroy—present
DeBeaussaert—present
DeGrow—present
Dingell—present
Dunaskiss—present

Emmons—present
Gast—present
Geake—present
Gougeon—present
Hart—present
Hoffman—present
Koivisto—present
McManus—present
Miller—excused
North—present
O'Brien—present
Peters—present
Posthumus—present

Rogers—present
Schuette—present
Schwarz—present
Shugars—present
A. Smith—present
V. Smith—present
Stallings—present
Steil—present
Stille—present
Van Regenmorter—present
Vaughn—present
Young—excused

Pastor John Downing of Saint John's United Church of Christ in Owosso offered the following invocation:

O God in heaven, we come before You this day petitioning Your presence in these hallowed halls of congress. These women and men gathered here have made a commitment to represent and govern fairly and wisely all Your children. Be with them and guide them in their duties. Touch their hearts, minds and ears with Your flaming spirit of love and accountability, so they hear Your word with their ears, understand Your word with their minds, and love Your word with their hearts, making possible the implementation of Your word and will in our world.

Dear God, You have many names. To some believers You are Yahweh, Allah. To others, there are some who call You Jehovah, to others You are the Great Spirit, to we who know You through Christ, You are Creator, Judge and Lord, and because of Jesus we call You Father. No matter what name we humans may give You, You are still one Lord, one Creator, and all of Your creation is one.

As these lawmakers assembled here consider, debate and pass laws which affect the lives of Your children, remind them that all people are Yours no matter what name they may worship You by, and that the great commission of representation carries with it tremendous privilege and responsibility. All people of faith, whether they be Moslem, Hindu, Jew or Christian, pray to You God, and You command us to protect the innocent, defend the orphan and widow, seek justice and peace, and so be rewarded with Your blessing.

Bless these leaders with Your presence, O God, so they may accomplish Your purpose. Prick their conscience so they stay centered on You and Your will, and great things will be done for all Your children in this great state. We thank You and praise You, O Lord, and may all that we do glorify Your holy name, through Jesus Christ's name I pray. Amen.

Motions and Communications

Senator Schwarz entered the Senate Chamber.

Senator DeGrow moved that Senator Bullard be excused from today's session.
The motion prevailed.

Senator V. Smith moved that Senators Miller and Young be excused from today's session.
The motion prevailed.

Senator DeGrow moved that rule 3.902 be suspended to allow the guests of Senator Rogers admittance to the Senate floor.

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

Senator DeGrow moved that rule 3.901 be suspended to allow photographers to film from the center aisle and other areas of the Senate Chamber.

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

Senator DeGrow moved that rule 3.902 be suspended to allow the guests of Senator Emmons admittance to the Senate floor.

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

Recess

Senator DeGrow moved that the Senate recess subject to the call of the President.
The motion prevailed, the time being 10:07 a.m.

10:17 a.m.

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

During the recess, a special presentation was made by Senator Emmons and Representative Alan Cropsey to the Portland St. Patrick's High School Girls' Basketball Team, the Class D state champions, and their Coach Al Schrauben and Assistant Coach Mark Scheurer.

Senators Hoffman, Berryman, North, Rogers, Koivisto and DeBeaussiaert asked and were granted unanimous consent to make statements and moved that the statements be printed in the Journal.

The motion prevailed.

Senator Hoffman's statement is as follows:

Yesterday a number of local papers around the state commented about our Michigan Department of Transportation Commission. Our members may recall that just a month ago I stood before you and shared with you my concerns about the Department of Corrections and how they were restricting the free speech rights of their employees by prohibiting them from talking to members of the legislature, through a memo sent by one of the Deputy Directors of the Department of Corrections.

Well, this month I come before you again to share with you, and inform many of you maybe for the first time, of a concern I have about what I call political blackmail on the part of the Department of Transportation Commission. The Transportation Commission, in newspapers around the state yesterday, said in their December meeting that they should not fund road projects in any district in which legislators don't support an increase in the gas tax.

We are passing out to each of you at this time the minutes of the Michigan State Transportation Commission workshop held here in Lansing on December 19. We want to quote a couple of items on page three. I will leave the minutes with each of you so you can read, in detail, what was said so that nothing can be construed or be taken out of context.

"Commissioner Kennedy reiterated his belief that the department should stop any money going to any district where the legislators do not support a gas tax."

"Commissioner Kennedy suggested that the commissioners not approve any project for preservation in any district where the legislator is not in favor of a gas tax."

"Chairman LaBelle asked the director if the department could put together a political analysis."

Well, my colleagues, I put together a political analysis. Last year, you may recall, I introduced Senate Joint Resolution V. That resolution would have put on the 1996 general election ballot a proposal to constitutionally do away with the State Transportation Commission. That proposal did not make it through the legislature last year. It is my hope that this year it will make it through the legislature. I have on my desk a similar proposal calling for a constitutional amendment to do away with the Michigan Transportation Commission.

I don't have to stand before you and sell the case. They make the case for themselves. But, I want to take it one step further. I want to again quote what Commissioner Kennedy said. "Commissioner Kennedy reiterated his belief that the department should stop any money going into any district where the legislators do not support a gas tax."

Our Chief Executive, Governor Engler, last night in his State of the State address said, "I am not recommending that this legislature raise fuel taxes." I just wonder what that means. Does that mean that in the eyes of Commissioner Kennedy that there will be no road projects in the state of Michigan because our governor doesn't support increasing the gasoline tax? I submit to you that is nothing more than pure arrogance—arrogance of the worst degree—by commissioners of the Michigan Transportation Commission. It is clearly political blackmail. If I were not a legislator and I had a state official come to me with similar circumstances, I might be talking to my local prosecutor to see what I couldn't do to bring criminal charges against somebody like that. It is not inappropriate; it is reprehensible. From my position here in the Michigan Senate, I believe that not only should we do away with the Transportation Commission, but I think that people with those kind of opinions don't do the citizens of our state any service. I would ask that members of the Transportation Commission step aside and let people who are genuinely interested in moving Michigan forward replace them until such time that the citizens of our state can constitutionally do away with that commission.

As Chairman of the Senate Appropriations Committee, I have had only one suggestion from that commission as far as how we might deal with the transportation needs in our state. Their statement to me is singular. "Raise gas taxes." Any bozo in this state could make a suggestion like that. Any politician could make a suggestion like that. But, the statesmen in this body, in the House of Representatives and our governor have said—and I quote the governor's State of the State address last night, "I believe that before fuel taxes are raised we must exhaust every alternative. Lower costs as much as possible and enact every possible reform. I am not satisfied that we have done our utmost."

This commission is representing the special interest of our state. This commission is representing the interest of the County Road Association of Michigan, the Road Builders Association of Michigan, and every other special interests groups who have come to us and asked us to raise the gas tax without making any sort of reform. That is what this is all about.

You talk about leadership, you talk about statesmanship, you talk about leading this state forward—you aren't doing it by raising taxes. You are going to do it by cutting unnecessary bureaucracies out, cutting unnecessary bureaus and laying off people who don't need to be on the public dole.

What we are after here this morning is a resolution to constitutionally do away with the Transportation Commission. I would ask the members for their support of this resolution. I would ask the members for a two-thirds majority vote here quickly on this issue so that we can start to undo part of the problem—not continue the problem—in the state of Michigan.

Again, I think it is reprehensible what the commissioners have said and I would ask them to voluntarily do a service to the citizens of our state and step aside and let the governor appoint people to that commission who have the best interest of the citizens of our state and not the selfish interests or special interests of a certain group.

Senator Berryman's first statement is as follows:

In response to the good Senator from the 19th District, and he knows that I have a great deal of respect for him, I heard the term that he made the statement that any bozo can get up and offer a gas tax increase. Well, in that case, give me a red nose and paint my face and give me some red hair because I have offered a gas tax increase. I have the bills to do it again during this legislature, and I don't think that makes me a clown. I think that makes me look at the transportation system in the state of Michigan in a realistic fashion; and I don't think it's a clowning matter. If anyone watched some of the state news this morning out of Detroit, there was a pothole so large that I think there were four or six cars in the morning rush that hit this pothole and had flat tires. I saw the interview with one woman who was fortunate that a car was not coming in the other lane and she was able to pull over to the right. That pothole took her car and destroyed her front tire. Fortunately, there was not an accident.

I think not only am I blaming the Governor for lack of leadership on the gas tax issue, I'm blaming everyone in this body and the House for not having the courage to deal with the roads in the state of Michigan.

No one likes to vote for a tax increase. None of our constituents like to get a tax increase. The previous Governor should have had the courage to raise the gas tax before he left office, but he didn't. This governor and legislature haven't had the courage to address this issue. But, when you try to fool my constituents and yours that the seven or eight point program is equivalent to an eight cent tax increase where they are actually going to see their roads and bridges fixed, it is a sham and a scheme to pull the wool over the eyes of the public of the state of Michigan and they're not going to buy it. Unless this administration wants to borrow more money, like Build Michigan, where is the money going to come from?

We have less money in the state of Michigan to deal with roads this year than we had last year. We were at 15 cents a gallon since 1984. Fifteen cents a gallon. In effect, this year we are going to be at 13.5 cents a gallon because 1.5 cents a gallon is going to pay off the Build Michigan bonds. Now what kind of fiscal responsibility is that? You go back to your district and you tell the people of the state of Michigan, your constituents, that they've got \$500 million worth of road work for \$1.2 to \$1.5 billion dollars. When Build Michigan is paid off we will have paid more in interest than money that ever went to roads and bridges. Now, you tell me that's being fiscally responsible. The gas tax is an user fee. It's a pay-as-you-go, and we should stop borrowing on the future and pay-as-you-go.

One other issue on the roads: When you tell me that we can have cost efficiencies out of the Department of Transportation and try to tell the public this will go to fix their roads it is hogwash. You could eliminate the entire administrative budget of the Department of Transportation, you wipe out every bit of the administration—the whole administrative budget—and you don't have enough money to rebuild 3.5 miles of an urban highway. You tell me where you are going to come up with enough cost efficiencies out of the Department of Transportation to repave my roads in my district, and Grand Rapids, and Flint and Detroit. Drive any of those.

We've always been proud of the fact that we're the motor capitol of the world, where our roads are an embarrassment to the nation. Not only are they an embarrassment, they're unsafe. We have potholes that are grabbing cars and throwing them off the roads, we've got pieces of cement falling off bridges, because we don't have the courage to talk about the "tax word."

Everyone here wants cost efficiencies. No one likes to raise taxes. Well, you better be honest with the public and don't try to fool them that shifting money around and not adding to that pot is actually going to improve their roads and bridges. If we ever do get around to doing what's right, although you may not think it's popular, but the general public does, the money collected through the gas system should be a user fee. They know that it's a trust fund, that money does not go into the general fund. When you ask them if money collected from an increase should go to roads and bridges, they will support that. Why are we not reflecting their views? People feel that their roads are dangerous. This body and this Governor are not reflecting the wishes of the general public. They want us to deal with these roads, and I don't know in good conscious for the next two years that we can go without a gas tax increase and actually see roads and bridges fixed.

If we've got so much money sitting around, then why is the Director of Transportation putting holds on projects because we don't have the money for them to continue? It's unsafe. Not only is the lack of leadership on the part of the administration of this body, but it's unsafe.

That's the bottom line. We can talk about colored license plates and all of those different things (colored license plates are going to do nothing but keep a drunk off the road), but you think you can talk about those things because it's publicly popular. Why don't we do what we were sent here to do, and that's to make some tough decisions, come up with cost efficiencies—yes, and I'll vote for those cost efficiencies—but be realistic and understand there will not be money to fix those roads and bridges unless a gas tax is a part of that proposal. Have the courage to do what is right and stop trying to fool the public that what was offered last night was any consolation, was any amount of money that was actually going to improve the roads in the state of Michigan. All that you are going to do is avoid the inevitable, because at some point, at some time, someone is going to have to address that issue and the longer we delay the more it's going to cost because simple repairs have turned into replacement.

One last item, when we're talking about bridges, I asked the Department about the one third of the bridges that are on the critical list. One third of all the bridges are still on the critical list. Do what's right. Stop trying to talk politically around what has to be done and address the issue and put enough money towards roads that we're actually going to make them safer for people to drive on.

Senator Berryman's second statement is as follows:

Just a couple of quick responses to the Senator from the 30th District. For one, in the last 15 minutes I've gone from a bozo to a fairy, and I'll take those, raps too, I guess. It's unbelievable to me that we can have the kind of discussions that we're having. The Senator from the 26th District who talks about courage said it's not courage to stand up and talk about a gas tax increase, but I guess it's okay to have the courage to borrow.

You go back and you tell your constituents that they have \$500 million worth of road work for \$1.5 billion. You justify that borrowing is better than paying as you go. In 1991 there was an article in the *Detroit News*. Headline: "Engler sees more cuts, higher gas tax in '92. Gas tax boost likely to pass by the end of the year," In May of 1996, "Engler sees gas tax hike likely by December." It sounds like an awful lot of flip-flopping from the administration in this legislature on dealing with this problem.

I want to address again the previous speaker, when he talks about courage. Senator, it doesn't take courage to borrow and at a later time have somebody else pay back and pay back two- or three-fold for something that this legislature hasn't had the courage to deal with.

Senator North's statement is as follows:

First of all, I would certainly concur with my colleague, Senator Koivisto, from the Upper Peninsula, on the privatization issue. I could one up him—we have already had a call this morning. So, he got one last night and we had one this morning from Harrisville. Harrisville is north of Tawas City and south of Alpena. They had no idea about who is their authorized distribution agent. So, I would concur with that.

I can understand the good Senator from the Nineteenth District, and I think this is deplorable policy. But I am relatively new to the legislative process, but I have been on earth a long time. I was around when we had the constitutional convention in 1963 that created the Transportation Commission. That commission was created to avoid the exact type things they were talking about, and that is the phrase "parochial interest." They were to set up transportation policy that was good for the entire state of Michigan, not just in this legislative district or that one.

I respectfully disagree. I think doing away with the Transportation Commission would be throwing the baby out with the bath water. However, I certainly understand Senator Hoffman's objection to this policy, and I feel it is deplorable.

Senator Rogers' statement is as follows:

I don't want to belabor the point, but I was certainly offended by some comments the member from the Seventeenth District made when he stated that we don't have the courage to talk about the "T" word. He said we don't have the courage to raise taxes on every citizen in the state of Michigan.

I am flabbergasted by that statement. We pay enough taxes now. There are enough taxes paid to do what we need to do on our roads. As a matter of fact, I would argue that it is indexed to the increase in the gasoline prices because 4% is a percentage of the overall price, not per gallon. Of course the other 2% of that going to education.

What you are going to do is go to every family who is trying to get by on \$8 an hour, every family that is making \$20,000 a year and trying to struggle to do everything they need to do to take care of their family and telling them, "Hey, Michigan citizen, hey family struggling to get by, we don't have the strength to tighten our belts, we are going to come to you and ask you to take \$500 out of your budget this year because we in the legislature can't get our act together and trim and nip and tuck our budget before we ask you to do yours."

Is that courage? Is that courage, taking \$500 out of someone making \$20,000 a year? Because it is disproportionate taxes on income. It hurts those people worse than it will the legislators here—people making \$50,000, \$60,000, \$70,000, \$80,000 a year. Of course they don't mind. But when you are at \$5, \$8, and \$12 an hour and you are trying to get by, you are taking a huge chunk out of their income. Not only are they going to pay more money at the pump, but when they buy bread, milk, cheese and diapers they are going to find the prices are going up again.

What have we accomplished? Nothing, we have hurt the very people we have fought so hard in the Republican caucus to defend over the last six years, certainly the last two years since I have been here. You call that courage? That is courage because you don't want to say, "Hey, department of state government you are going to have to trim your budget, you're going to have to do without, you're going to have to buy a few less pencils."

Last night the Governor proposed some serious funding for our roads—a great increase—it is going to work out to 6 to 8 cents a gallon. That, to me, is leadership. That is leadership for the very people we fight for every day in these chambers.

I am absolutely offended that we would say it takes courage to raise taxes and we are some kind of a coward for going back and cutting budgets and making government work for the very people that need it most. I want to applaud the Governor's efforts last night to do the responsible thing, to make the tough choices and do the right thing for Michigan, and for everybody who gets up in the morning and tries to go to work and take care of their family.

Senator Koivisto's statement is as follows:

I would like to make a statement regarding a different subject matter and that is liquor privatization. The reason that I am bringing it up is because I did a lot of talking when we were talking about it before. I think the words that I used

were that we were going to have chaos, a disruption of supply, and we were going to have massive confusion with legitimate business people. All of that has transpired and no one can stand up here and hide behind Giddings' ruling that had nothing to do with it. The problem is that we privatized without having the net worth set up to take care of the distribution. How can you go about privatizing and not having anything set up to deal with it?

I got a call yesterday from a bar owner telling me he ordered eleven brands of liquor and was told that there were only four in supply, and they do not know when they will be equipped to deal with the others. How long will these people have to wait before they can get back to doing business without becoming criminals by running over to Wisconsin to buy their alcohol because Michigan let them down. It is a big problem, and the reason that I am voicing an opinion publicly right now is because something needs to be done about it. And something needs to be done by the legislature because we are catching the heat for something we did not do. We did not set up this system to begin with. It was done by the Liquor Control Commission, and we need to do something in a hurry before we have more chaos and confusion and legitimate business people going across the border to buy their alcohol from other states.

As I mentioned earlier, because we have confidential memos, there are three wholesalers in the state who are not equipped to deal with the privatization; they did not have the products in their warehouses and they were not set to go on January 13 and they still let them go through with the privatization. It is a thing that I get upset about because I am getting calls daily. I have had ski hills call me over the weekend and say, "We don't have any product. We can't sell alcohol at our ski hills." Why do we put people in that position? If we have learned anything from privatization we have learned that if we are going to do something like that, we better make sure that the net worth is set up to handle that before we go ahead and privatize.

Senator DeBeaussaert's statement is as follows:

Putting aside the debate about the wisdom, or lack of wisdom, but moving forward on a proposal to raise revenue, I think it is important that we focus on what was suggested, apparently by a member of the commission. It seems to me, whether we agree or disagree with the notion of changing the gas tax, we should come together in the notion of condemning the proposition that any appointed bureaucrat use state tax monies to reward or punish elected officials for representing the wishes as they see it of their district. That seems to me to be an outrage. I would concur with the original comments by the Senator of the 19th, that the actions of that commissioner do not represent the public interest. It seems to me that the Transportation Commission should be attempting to maximize the use of tax dollars, to best serve the transportation and safety of the people of Michigan, and not to raise some political agenda. So I think that his suggestion that those commissioners who have taken that position should step aside in the public interest, is one that should be well taken and I would concur in that suggestion.

By unanimous consent the Senate proceeded to the order of

General Orders

Senator Bouchard 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 Binsfeld, designated Senator Bouchard as Chairperson.

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

Senate Bill No. 18, entitled

A bill to amend 1921 PA 246, entitled "An act to regulate the service, rates, fares and charges of carriers by water within this state," (MCL 460.201 to 460.206) by adding section 7.

The bill was placed on the order of Third Reading of Bills.

By unanimous consent the Senate proceeded to the order of

Resolutions

Senate Resolution No. 10.

A resolution honoring Marilyn K. Hall.

The question being on the adoption of the resolution,

The resolution was adopted.

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

The motion prevailed.

Senator Van Regenmorter's statement is as follows:

Marilyn Hall, has been the state court administrator representing the Judicial Branch of government and working with us in the legislature over the past number of years. Over those years she's become a friend of mine, and I know a friend of many of you here. She served a number of chief justices, has had a considerable impact in providing information, and has had a direct impact on legislation, because we have used her and her staff as a resource. Some time ago, she had a very serious automobile accident and suffered some ill effects from that, but she has been back to work and has decided to retire. She's going to be missed. This resolution recognizes her long and most honorable contribution to her great representation of the Judicial Branch of government and her fine administrative skills.

By unanimous consent the Senate returned to the order of

Introduction and Referral of Bills

Senator DeBeaussaert introduced

Senate Bill No. 87, entitled

A bill to amend the Initiated Law of 1996, entitled "Michigan gaming control and revenue act," by amending section 12 (MCL 432.212).

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

Senator Byrum introduced

Senate Bill No. 97, entitled

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending sections 200, 201, 204, 204a, 205, 205a, 206, 207, 210, and 211 (MCL 750.200, 750.201, 750.204, 750.204a, 750.205, 750.205a, 750.206, 750.207, 750.210, and 750.211).

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

Senator V. Smith introduced

Senate Bill No. 98, entitled

A bill to amend 1974 PA 150, entitled "Youth rehabilitation services act," by amending section 4 (MCL 803.304), as amended by 1988 PA 76.

The bill was read a first and second time by title and referred to the Committee on Families, Mental Health and Human Services.

Scheduled Meeting

Appropriations Committee, Joint House and Senate - Thursday, February 6, at 11:00 a.m., House Appropriations Room, Capitol Building (3-6660).

Senator DeGrow moved that the Senate adjourn.

The motion prevailed, the time being 11:07 a.m.

The President, Lieutenant Governor Binsfeld, declared the Senate adjourned until Thursday, January 30, at 10:00 a.m.

CAROL MOREY VIVENTI
Secretary of the Senate.

