

No. 45
JOURNAL OF THE SENATE

Senate Chamber, Lansing, Wednesday, May 23, 2001.

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
Garcia—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
Schuette—present
Schwarz—present
Scott—present
Shugars—present
Sikkema—present
Smith—present
Steil—present
Stille—present
Van Regenmorter—present
Vaughn—excused
Young—present

Senator Beverly S. Hammerstrom of the 17th District offered the following invocation:

Heavenly Father, look down upon the members and staff of the Senate this morning as we convene to attend to the affairs of this state. May we be thoughtful in our deliberation and wise in our decision-making. May we always be compassionate toward others. As we pass through this day, help each of us to smile more than we frown. And Father, above all, may we find pleasure in the simple things of life and joy in being alive in this wonderful world which You have created. In Thy name we pray. Amen.

Motions and Communications

Senator Emmons moved that Senators Schuette and Garcia be temporarily excused from today's session. The motion prevailed.

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

The Secretary announced that the following House bill was received in the Senate and filed on Tuesday, May 22:
House Bill No. 4734

The Secretary announced the enrollment printing and presentation to the Governor on Tuesday, May 22, for his approval the following bill:

Enrolled Senate Bill No. 341 at 1:32 p.m.

Messages from the House

Senator Emmons moved that consideration of the following joint resolution be postponed for today:

Senate Joint Resolution D

The motion prevailed.

Senator Garcia entered the Senate Chamber.

Senate Bill No. 72, entitled

A bill to amend 1931 PA 328, entitled "The Michigan penal code," (MCL 750.1 to 750.568) by adding section 81c. The House of Representatives has amended the bill as follows:

1. Amend page 2, line 17, by striking out "June" and inserting "September".

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

Pursuant to rule 3.202, the bill was laid over one day.

Senate Bill No. 73, entitled

A bill to amend 1931 PA 328, entitled "The Michigan penal code," (MCL 750.1 to 750.568) by adding section 217e. The House of Representatives has amended the bill as follows:

1. Amend page 2, line 15, after "effect" by striking out "June" and inserting "September".

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

Pursuant to rule 3.202, the bill was laid over one day.

Senate Bill No. 74, entitled

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending section 16d of chapter XVII (MCL 777.16d), as amended by 2000 PA 279.

The House of Representatives has substituted (H-2) the bill.

The House of Representatives has passed the bill as substituted (H-2), ordered that it be given immediate effect and amended the title to read as follows:

A bill to amend 1927 PA 175, entitled “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,” by amending section 16d of chapter XVII (MCL 777.16d), as amended by 2001 PA 2.

Pursuant to rule 3.202, the bill was laid over one day.

Senate Bill No. 75, entitled

A bill to amend 1927 PA 175, entitled “The code of criminal procedure,” by amending section 16l of chapter XVII (MCL 777.16l), as amended by 2000 PA 279.

The House of Representatives has amended the bill as follows:

1. Amend page 2, line 35, after “effect” by striking out “June” and inserting “September”.

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

Pursuant to rule 3.202, the bill was laid over one day.

Senate Bill No. 283, entitled

A bill to make, supplement, and adjust appropriations for capital outlay and certain state departments and agencies for the fiscal year ending September 30, 2001; to implement the appropriations within the budgetary process; to provide for the expenditure of appropriations; and to repeal acts and parts of acts.

The House of Representatives has substituted (H-1) the bill.

The House of Representatives has passed the bill as substituted (H-1).

Pursuant to rule 3.202, the bill was laid over one day.

By unanimous consent the Senate proceeded to the order of

Introduction and Referral of Bills

Senators Peters, Byrum, Dingell, DeBeaussaert, Emerson, Miller, Smith and Leland introduced

Senate Bill No. 506, entitled

A bill to amend 1980 PA 300, entitled “The public school employees retirement act of 1979,” by amending section 75 (MCL 38.1375), as amended by 1989 PA 194.

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

House Bill No. 4734, entitled

A bill to amend 1982 PA 432, entitled “Motor bus transportation act,” by amending section 31 (MCL 474.131), as amended by 1996 PA 420.

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 Transportation and Tourism.

Recess

Senator Emmons moved that the Senate recess subject to the call of the President.

The motion prevailed, the time being 10:08 a.m.

12:09 p.m.

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

During the recess, Senator Schuette entered the Senate Chamber.

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

Senator Emmons moved that the following bills be placed at the head of the Third Reading of Bills calendar:

House Bill No. 4409

House Bill No. 4538

Senate Bill No. 152

The motion prevailed.

The following bill was read a third time:

House Bill No. 4409, entitled

A bill to amend 1994 PA 451, entitled “Natural resources and environmental protection act,” by amending section 82118 (MCL 324.82118), as amended by 1996 PA 183.

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. 105

Yeas—35

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

Nays—1

Jaye

Excused—2

Dunaskiss

Vaughn

Not Voting—0

In The Chair: President

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.

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

“An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts,”.

The Senate agreed to the full title.

The following bill was read a third time:

House Bill No. 4538, entitled

A bill to amend 1994 PA 451, entitled “Natural resources and environmental protection act,” by amending section 82110 (MCL 324.82110), as added by 1995 PA 58.

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. 106

Yeas—36

Bennett	Garcia	Koivisto	Schwarz
Bullard	Gast	Leland	Scott
Byrum	Goschka	McCotter	Shugars
Cherry	Gougeon	McManus	Sikkema
DeBeaussiaert	Hammerstrom	Miller	Smith
DeGrow	Hart	Murphy	Steil
Dingell	Hoffman	North	Stille
Emerson	Jaye	Peters	Van Regenmorter
Emmons	Johnson	Schuetz	Young

Nays—0

Excused—2

Dunaskiss

Vaughn

Not Voting—0

In The Chair: President

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.

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

“An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts,”.

The Senate agreed to the full title.

The following bill was read a third time:

Senate Bill No. 152, entitled

A bill to amend 1994 PA 451, entitled “Natural resources and environmental protection act,” by amending section 3101 (MCL 324.3101), as amended by 1997 PA 29, and by adding section 3103a.

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. 107**Yeas—36**

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

Nays—0**Excused—2**

Dunaskiss Vaughn

Not Voting—0

In The Chair: President

The Senate agreed to the title of the bill.

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

Senator Emmons 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 Posthumus, designated Senator Schwarz as Chairperson.

After some time spent therein, the Committee arose; and, the President pro tempore, Senator Schwarz, having assumed the Chair, the Committee reported back to the Senate, favorably and with amendment, the following bill:

Senate Bill No. 464, entitled

A bill to amend 1925 PA 285, entitled “An act to provide for the organization, operation, and supervision of credit unions; to provide for the conversion of a state credit union into a federal credit union or a credit union organized and supervised under the laws of any other state or territory of the United States and for the conversion of a federal credit union or a credit union organized and supervised under the laws of any other state or territory of the United States into a state credit union; and to provide for the merger of credit unions organized and supervised under the laws of this state, credit unions organized and supervised under the laws of any other state or territory of the United States, and federal credit unions,” by amending the title and sections 1a, 6, 6c, 25, and 26 (MCL 490.1a, 490.6, 490.6c, 490.25, and 490.26), the title as amended and section 6c as added by 1986 PA 278, section 1a as amended by 1995 PA 163, section 6 as amended by 1993 PA 246, and sections 25 and 26 as amended by 1992 PA 246, and by adding sections 25a, 25b, and 25c.

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

1. Amend page 30, line 5, after “TRUSTEE,” by inserting “COLLECTIVE BARGAINING AGREEMENT,”.

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.

By unanimous consent the Senate proceeded to the order of
Statements

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

The motion prevailed.

Senator Sikkema's statement is as follows:

Today, the full Senate supported and adopted Senate Bill No. 152. This legislation addresses what I think is the single, greatest threat to the Great Lakes today—the damage caused by the introduction of non-native species. I want to take a moment to talk about this bill in the order of Statements, so we wouldn't delay the actual voting when we were on Third Reading. But I want the members to know that the Senate Committee on Natural Resources and Environmental Affairs has been working on this particular issue for 15 months.

As chairman of the committee, I, with the committee, conducted five public hearings across the state last year to take testimony and to gather information on the extent of this particular problem. We did have legislation last year, Senate Bill No. 955, but it did not receive enough support to move through the legislative process, although it certainly did raise public awareness on this issue and moved this issue to the top of Michigan's environmental agenda.

The bill the Senate adopted today represents an approach to addressing this problem that is dramatically different from Senate Bill No. 955 from last session. Last session's bill proposed a fairly typical regulatory approach. That is, Michigan would establish a permitting program for oceangoing vessels, conduct inspections to ensure permit compliance, and levy penalties for noncompliance. This legislation was criticized and opposed for a number of reasons. I'm not going to go into all of them, but we began our new session this year by clearing the decks and rethinking how best to address this problem. I believe the approach contained in Senate Bill No. 152 has even more potential than our past efforts to stop the introduction of non-native species into the Great Lakes. The reason, I believe, is that it combines the economic power of the marketplace with government regulation. It creates an incentive for oceangoing vessels to want to use ballast water treatment technology not because government requires them to do it, but rather because their clients wouldn't hire them if they didn't.

It's my opinion that the damage by non-native species is the single, most important problem in the Great Lakes today. Senate Bill No. 152 will set us on a course to solve this problem and stop the introduction of new species.

Recess

Senator Emmons moved that the Senate recess until 4:00 p.m.

The motion prevailed, the time being 12:25 p.m.

The Senate reconvened at the expiration of the recess and pursuant to rule 1.101, in the absence of the Presiding Officers, the Senate was called to order by the Secretary of the Senate.

Recess

Senator Emmons moved that the Senate recess subject to the call of the President.

The motion prevailed, the time being 4:01 p.m.

6:22 p.m.

The Senate was called to order by the President pro tempore, Senator Schwarz.

By unanimous consent the Senate returned to the order of
Motions and Communications

Senator Emmons moved that the rules be suspended and that the following resolution, now on Committee Reports, be placed on the order of Resolutions:

Senate Resolution No. 47

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

Committee Reports

The Committee on Finance reported

Senate Bill No. 437, entitled

A bill to amend 1933 PA 167, entitled "General sales tax act," by amending section 4x (MCL 205.54x), as added by 2000 PA 204.

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.

Joanne G. Emmons
Chairperson

To Report Out:

Yeas: Senators Emmons, Bullard, Garcia and Byrum

Nays: None

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

The Committee on Finance reported

Senate Bill No. 490, entitled

A bill to amend 1975 PA 228, entitled "Single business tax act," by amending section 35 (MCL 208.35), as amended by 2000 PA 429.

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.

Joanne G. Emmons
Chairperson

To Report Out:

Yeas: Senators Emmons, Bullard, Garcia and Byrum

Nays: None

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

The Committee on Finance reported

Senate Bill No. 491, entitled

A bill to amend 1937 PA 94, entitled "Use tax act," by amending section 4 (MCL 205.94), as amended by 2000 PA 200.

With the recommendation that the bill pass.

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

Joanne G. Emmons
Chairperson

To Report Out:

Yeas: Senators Emmons, Bullard, Garcia and Byrum

Nays: None

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

The Committee on Finance reported

Senate Bill No. 492, entitled

A bill to amend 1933 PA 167, entitled "General sales tax act," by amending section 4x (MCL 205.54x), as added by 2000 PA 204.

With the recommendation that the bill pass.

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

Joanne G. Emmons
Chairperson

To Report Out:

Yeas: Senators Emmons, Bullard, Garcia and Byrum

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 Finance submits the following:

Meeting held on Tuesday, May 22, 2001, at 1:05 p.m., Rooms 402 and 403, Capitol Building

Present: Senators Emmons (C), Bullard, Garcia and Byrum

Excused: Senator Peters

The Select Committee to Examine the Qualifications of Senator Jaye reported

Senate Resolution No. 47.

A resolution to expel Senator David Jaye of the Twelfth Senatorial District, State of Michigan.

(For text of resolution, see Senate Journal No. 35, p. 394.)

With the recommendation that the following substitute (S-1) be adopted and that the resolution then be adopted:

A resolution to expel Senator David Jaye of the Twelfth Senatorial District, State of Michigan.

Whereas, Article IV, Section 16 of the Constitution of the State of Michigan states, in relevant part:

“...Each house shall be the sole judge of the qualifications, elections and returns of its members, and may, with the concurrence of two-thirds of all the members elected thereto and serving therein, expel a member...”

; and

Whereas, Senate Rule 1.301 states:

“Each Senator shall conduct himself or herself to justify the confidence placed in him or her by the people and shall, by personal example and admonition to colleagues, maintain the integrity and responsibility of his or her office.”

; and

Whereas, Senate Rule 1.309 states:

“a) A Senator shall not convert for personal, business and/or campaign use, unrelated to Senate business, any supplies, services, facilities, or staff provided by the State of Michigan. This includes but is not limited to, telephones, telecopy machines, computers, postage, and copy machines....”

; and

Whereas, Senate Rule 1.311 states, in relevant part:

“...A Senator determined to have violated the provisions of the rules regulating ethics and conduct may be reprimanded, censured, or expelled...”

; and

Whereas, Senator David Jaye of the Twelfth Senatorial District has been involved in a recurring pattern of personal misconduct, as described below, consisting of multiple criminal convictions, including jail time; a record of abusive, intimidating, and violent behavior, including two physical altercations, which resulted in police intervention; and misuse of his position as State Senator to intimidate legislative staff members and to misuse Senate staff members and resources; and

Whereas, On June 12, 2000, in the 41A District Court for the County of Macomb, State of Michigan, Senator David Jaye pled guilty to a charge of operating a motor vehicle with an unlawful blood alcohol content, his third alcohol-related driving conviction, the first being a conviction on May 7, 1985, for operating a motor vehicle while impaired and the second being on April 12, 1993, for operating a motor vehicle while under the influence of alcohol or with an unlawful blood alcohol content; and

Whereas, Shortly after being elected to the State Senate, Senator David Jaye demonstrated a pattern of verbally abusing members of partisan and nonpartisan legislative staff, particularly women, through the use of indefensible, vulgar, and humiliating profanity and demeaning language. Specific testimony given by the victims of these verbal assaults substantiated that incidents of this nature occurred on February 10, 1998, in the Fall of 1998, and again on February 16, 1999. Further documentary evidence indicated that such incidents had occurred on a number of other occasions; and

Whereas, As a result of such incidents, on February 24, 1999, and again on March 9, 1999, Senator David Jaye was advised by the Senate Majority Leader that his verbal abuse of staff was unacceptable and would not be tolerated; and

Whereas, On November 29, 2000, Senate staff members were requested by Senator David Jaye to service his state-owned computer, which unjustifiably subjected them to numerous sexually explicit photographs in the performance of their duties, and which deeply offended and embarrassed the staff members; and

Whereas, Senator David Jaye has been progressively disciplined by Senate leadership, including the following steps: removal from his committee assignments, relieving him of the ability to supervise his staff while he was incarcerated, suspension of his non-SOCC travel allowances, suspension of his stamp and mass mailing privileges, and prohibiting direct contact with central staff and nonpartisan staff except through the directors of those offices; and

Whereas, In spite of sincere efforts to help Senator David Jaye alter his egregious pattern of behavior, he has continued to attempt to use his position as a State Senator in an effort to engage in and subsequently excuse his mistreatment of those less powerful than he. This is evidenced by his conduct on November 19, 2000, when he was involved in a violent physical altercation with his fiancée in Bay County, Michigan, which was witnessed by numerous citizens. This resulted in a citizen's emergency 911 call, and his subsequent apprehension by Michigan State Police troopers, which revealed that he was operating a motor vehicle in violation of the terms of his restricted license due to his June 12, 2000, conviction for operating a motor vehicle with an unlawful blood alcohol content - second offense; and

Whereas, Senator David Jaye's pattern of egregious behavior continued on April 12, 2001, when, again, he was involved in a violent physical altercation with his fiancée that resulted in her emergency 911 telephone call, her sworn written statement, and his subsequent arrest by Lee County Sheriff's Deputies in Fort Myers, Florida; and

Whereas, Public trust and confidence in government, and equality under law, are prerequisites to the functioning of a democratic society; now, therefore, be it

Resolved by the Senate, That, by exploiting his position as a State Senator to intimidate others and willfully and repeatedly committing serious personal transgressions, Senator David Jaye has violated the Senate Rules, failed to maintain the integrity and responsibility of his office, and seriously undermined the confidence and trust of the citizenry in the institutions of their government; and be it further

Resolved, That Senator David Jaye has violated the public trust by using his position as a Michigan State Senator against those who are in a lesser position of power; and be it further

Resolved, That Senator David Jaye has abused the office of State Senator, as evidenced by specific behavior and actions cited in this resolution, and has damaged the institution to which he was elected; and be it further

Resolved, That in accordance with the above-cited provisions of the Constitution of the State of Michigan and Senate Rules, the Michigan State Senate hereby determines and proclaims Senator David Jaye unfit to continue as a member of this esteemed body and does therefore expel him from the office of Michigan State Senator, effective immediately.

Thaddeus G. McCotter
Chairperson

To Report Out:

Yeas: Senators McCotter, Hoffman, North, Cherry and Smith

Nays: Senator Koivisto

The resolution was placed on the order of Resolutions.

COMMITTEE ATTENDANCE REPORT

The Select Committee to Examine Qualifications of Senator Jaye submits the following:

Meeting held on Tuesday, May 22, 2001, at 9:00 a.m., Senate Hearing Room, Ground Floor, Michigan National Tower

Present: Senators McCotter (C), Hoffman, North, Cherry (VC), Smith and Koivisto

COMMITTEE ATTENDANCE REPORT

The Committee on Education submits the following:

Meeting held on Tuesday, May 22, 2001, at 3:00 p.m., Room 210, Farnum Building

Present: Senators Bennett (C), Johnson, Stille, Peters and Leland

Scheduled Meetings

Banking and Financial Institutions - Thursday, May 24, 9:00 a.m., Room 210, Farnum Building (373-2420)

Senator Emmons moved that the Senate adjourn.

The motion prevailed, the time being 6:23 p.m.

The President pro tempore, Senator Schwarz, declared the Senate adjourned until Thursday, May 24, at 10:00 a.m.

CAROL MOREY VIVENTI
Secretary of the Senate.