

No. 12
STATE OF MICHIGAN
Journal of the Senate
92nd Legislature
REGULAR SESSION OF 2004

Senate Chamber, Lansing, Tuesday, February 10, 2004.

10:00 a.m.

The Senate was called to order by the President pro tempore, Senator Patricia L. Birkholz.

The roll was called by the Secretary of the Senate, who announced that a quorum was not present.

Allen—present
Barcia—present
Basham—present
Bernero—present
Birkholz—present
Bishop—present
Brater—present
Brown—present
Cassis—present
Cherry—present
Clark-Coleman—present
Clarke—present
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—present
Van Woerkom—present

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

Our Heavenly Father, I come to You this morning saying thank You. Thank You for all Your many blessings that You have bestowed upon us. I thank Thee for all who came before me, all of my ancestors who paved the way. I thank You for all their contributions that they gave to this country.

And, Father, I thank You for the opportunity to be able to serve in this wonderful Senate. I thank You for all my colleagues today. Lord, I thank You for giving us the opportunity to serve, especially to serve those people who cannot help themselves, and Father, we are in some terrible times now.

There are people who can't get health care. The hospitals are closing. Father, so many people are losing their jobs, and we have a long list of homeless. Father, we ask You to just intervene and touch those who have the authority to do something about it, Lord. Touch them and let them know that all people are Your people, and when you have done it unto the least of these, you've done it unto Thee.

So, Father, we just give You thanks and praise because we know that You're in the midst of us each and every day. So again we thank You for this day, and Lord we ask You to touch each and every one of the elected officials all over this country, Lord. O Heavenly Father, we just say thank You.

I thank Thee for my parents, Father, and I just say thank You. Thank You for the opportunity to pray this morning. Amen.

The President pro tempore, Senator Birkholz, led the members of the Senate in recital of the *Pledge of Allegiance*.

Recess

Senator Schauer moved that the Senate recess subject to the call of the Chair.

The motion prevailed, the time being 10:05 a.m.

10:11 a.m.

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

During the recess, Senators McManus, Brown, Bishop, Gilbert, Van Woerkom, Patterson, Garcia, Stamas, Allen, George, Cassis, Kuipers, Sikkema, Goschka, Cropsey, Jelinek, Hardiman, Johnson, Toy and Hammerstrom entered the Senate Chamber.

A quorum of the Senate was present.

Motions and Communications

Senator Hammerstrom moved that the Committee on Government Operations be discharged from further consideration of the following bill:

House Bill No. 5179, entitled

A bill to amend 1954 PA 116, entitled "Michigan election law," by amending section 662 (MCL 168.662), as amended by 1999 PA 216.

The motion prevailed, a majority of the members serving voting therefor, and the bill was placed on the order of General Orders.

The following communication was received:
Office of the Great Lakes

January 26, 2004

Attached is a list of four research projects approved for funding under the Michigan Great Lakes Protection Fund (MGLPF) in compliance with Act 156 of the Public Acts of 1989. Section 10(1) of PA 156 requires that this list be submitted annually to the legislature.

The Office of the Great Lakes (OGL) did not release a request for new proposals in 2003 due to funding constraints. Executive Order 2002-22 supplanted \$400,000 general fund from the OGL budget and substituted funding from the MGLPF for OGL administrative costs. In addition, there has not been a revenue allocation from the Regional Great

Lakes Protection Fund in the past two years. Therefore, the MGLPF is only providing funding to four ongoing projects. These projects were previously recommended by the MGLPF Technical Advisory Board after extensive review. Funding for the projects was approved under the Department of Environmental Quality's (DEQ) FY 2004 appropriations. A list of guidelines used in listing and assigning priority of the proposed grants is also attached.

If you have any questions, please contact Ms. Emily Finnell of my staff at 517-241-7927, or you may contact me.

Sincerely,
Ken DeBeaussaert
Director
517-335-4056

The communication was referred to the Secretary for record.

The following communication was received:
Department of State

Administrative Rules
Notice of Filing

February 2, 2004

In accordance with the provisions of Section 46(1) of Act 306, Public Acts of 1969, as amended, and Executive Order 1995-6 this is to advise you that the Office of Regulatory Reform, Legal Division filed at 1:03 p.m. this date, administrative rule (04-02-01) for the Department of Labor and Economic Growth, Public Service Commission, entitled "*Electric Distribution Service Standards,*" effective 7 days after filing with the Secretary of State.

Sincerely,
Terri Lynn Land
Secretary of State
Elena L. Beasley, Manager
Office of the Great Seal

The communication was referred to the Secretary for record.

The following communication was received:
Office of the Auditor General

February 4, 2004

Enclosed is a copy of the following audit report:
Performance audit of the Bureau of Local Government Services, Department of Treasury.

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

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, February 5:
House Bill Nos. 4098 4099 4969 5238

The Secretary announced that the following official bills and joint resolution were printed on Thursday, February 5, and are available at the legislative Web site:

Senate Bill Nos. 941 950 951 952 953 954 955 956 957 958
Senate Joint Resolution G
House Bill Nos. 5447 5448 5449 5450 5451 5452 5453 5454 5455 5456 5457 5458 5476

The Secretary announced that the following official bills and joint resolution were printed on Friday, February 6, and are available at the legislative Web site:

Senate Bill Nos. 959 960 961 963 964 965 966 967
House Bill Nos. 5459 5460 5461 5462 5463 5464 5465 5466 5467 5468 5469 5470 5471 5472
5473 5474 5475 5477 5478 5479 5480 5481 5482 5483 5484 5485 5486 5487
5488 5489 5490 5491 5492
House Joint Resolution V

By unanimous consent the Senate proceeded to the order of
Conference Reports

Senator McManus submitted the following:

FIRST CONFERENCE REPORT

The Committee of Conference on the matters of difference between the two Houses concerning
Senate Bill No. 252, entitled

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 3111 and 3113 (MCL 324.3111 and 324.3113) and by adding sections 3120 and 3121.

Recommends:

First: That the Senate and House agree to the Substitute of the House as passed by the House, amended to read as follows:

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 3103, 3112, 3113, 3115, 3118, and 3119 (MCL 324.3103, 324.3112, 324.3113, 324.3115, 324.3118, and 324.3119), section 3118 as amended by 1999 PA 35 and section 3119 as amended by 1999 PA 106, and by adding sections 3120 and 3121.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 3103. (1) The department shall protect and conserve the water resources of the state and shall have control of the pollution of surface or underground waters of the state and the Great Lakes, which are or may be affected by waste disposal of any person. The department may make or cause to be made surveys, studies, and investigations of the uses of waters of the state, both surface and underground, and cooperate with other governments and governmental units and agencies in making the surveys, studies, and investigations. The department shall assist in an advisory capacity a flood control district that may be authorized by the legislature. The department, in the public interest, shall appear and present evidence, reports, and other testimony during the hearings involving the creation and organization of flood control districts. The department shall advise and consult with the legislature on the obligation of the state to participate in the costs of construction and maintenance as provided for in the official plans of a flood control district or intercounty drainage district.

(2) The department shall enforce this part and shall promulgate rules as it considers necessary to carry out its duties under this part. **However, notwithstanding any rule-promulgation authority that is provided in this part, beginning on the effective date of the amendatory act that amended this section, the department shall not promulgate any additional rules unless specific rule-making authority is authorized by law.**

(3) ~~(2) The Subject to subsection (2),~~ the department may promulgate rules and take other actions as may be necessary to comply with the federal water pollution control act, chapter 758, 86 Stat. 816, 33 U.S.C. 1251 to 1252, 1253 to 1254, 1255 to 1257, 1258 to 1270, 1281, 1282 to 1293, 1294 to 1299, 1311 to 1313, 1314 to 1330, 1341 to 1345, 1361 to 1377, and 1381 to 1387, and to expend funds available under such law for extension or improvement of the state or interstate program for prevention and control of water pollution. This part shall not be construed as authorizing the department to expend or to incur any obligation to expend any state funds for such purpose in excess of any amount that is appropriated by the legislature.

Sec. 3112. (1) A person shall not discharge any waste or waste effluent into the waters of this state unless the person is in possession of a valid permit from the department. ~~Compliance with the terms of an outstanding order of determination or final order of determination or stipulation with the former water resources commission that is in effect on April 15, 1973, shall be considered to meet the requirements of this section until the department issues its permit.~~

(2) **An application for a permit under subsection (1) shall be submitted to the department. Within 30 days after an application for a new or increased use is received, the department shall determine whether the application is administratively complete. Within 90 days after an application for reissuance of a permit is received, the department shall determine whether the application is administratively complete. If the department determines that an application is not complete, the department shall notify the applicant in writing within the applicable time period. If the department does not make a determination as to whether the application is complete within the applicable time period, the application shall be considered to be complete.**

(3) The department shall condition the continued validity of a permit upon the permittee's meeting the effluent requirements that the department considers necessary to prevent unlawful pollution by the dates that the department considers to be reasonable and necessary and to assure compliance with applicable federal law and regulations. If the department finds that the terms of a permit have been, are being, or may be violated, it may modify, suspend, or revoke the permit or grant the permittee a reasonable period of time in which to comply with the permit. The department may reissue a revoked permit upon a showing satisfactory to the department that the permittee has corrected the violation. A person who has had a permit revoked may apply for a new permit.

(4) ~~(2)~~ If the department determines that a person is causing or is about to cause unlawful pollution of the waters of this state, the department may notify the alleged offender of its determination and enter an order requiring the person to abate the pollution or refer the matter to the attorney general for legal action, or both.

(5) ~~(3)~~ A person who is aggrieved by an order of abatement of the department or by the reissuance, modification, suspension, or revocation of an existing permit of the department executed pursuant to this section may file a sworn petition with the ~~commission~~ **department** setting forth the grounds and reasons for the complaint and asking for a contested case hearing on the matter pursuant to the administrative procedures act of 1969, ~~Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws~~ **1969 PA 306, MCL 24.201 to 24.328**. A petition filed more than 60 days after action on the order or permit may be rejected by the ~~commission~~ **department** as being untimely.

Sec. 3113. (1) A person who seeks a new or increased use of the waters of the state for sewage or other waste disposal purposes shall file with the department an application setting forth the information required by the department, including the nature of the enterprise or development contemplated, the amount of water required to be used, its source, the proposed point of discharge of the wastes into the waters of the state, the estimated amount to be discharged, and a statement setting forth the expected bacterial, physical, chemical, and other known characteristics of the wastes.

(2) ~~Within 180 days after receipt of a complete application, the department shall either grant or deny a permit, unless the applicant and the department agree to extend this time period.~~ If a permit is granted, the department shall condition the permit upon such restrictions that the department considers necessary to adequately guard against unlawful uses of the waters of the state as are set forth in section 3109.

(3) If the permit or denial of a new or increased use is not acceptable to the permittee, the applicant, or any other person, the permittee, the applicant, or other person may file a sworn petition with the department setting forth the grounds and reasons for the complaint and asking for a contested case hearing on the matter pursuant to the administrative procedures act of 1969, ~~Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws~~ **1969 PA 306, MCL 24.201 to 24.328**. A petition filed more than 60 days after action on the permit application may be rejected by the ~~commission~~ **department** as being untimely.

Sec. 3115. (1) The department may request the attorney general to commence a civil action for appropriate relief, including a permanent or temporary injunction, for a violation of this part or a provision of a permit, order, rule, or stipulation of the department. An action under this subsection may be brought in the circuit court for the county of Ingham or for the county in which the defendant is located, resides, or is doing business. **If requested by the defendant within 21 days after service of process, the court shall grant a change of venue to the circuit court for the county of Ingham or for the county in which the alleged violation occurred, is occurring, or, in the event of a threat of violation, will occur.** The court has jurisdiction to restrain the violation and to require compliance. In addition to any other relief granted under this subsection, the court shall impose a civil fine of not less than \$2,500.00 and may award reasonable attorney fees and costs to the prevailing party. However, the maximum fine imposed by the court shall be not more than \$25,000.00 per day of violation.

(2) A person who at the time of the violation knew or should have known that he or she discharged a substance contrary to this part, or contrary to a permit, order, rule, or stipulation of the department, or who intentionally makes a false statement, representation, or certification in an application for or form pertaining to a permit or in a notice or report required by the terms and conditions of an issued permit, or who intentionally renders inaccurate a monitoring device or record required to be maintained by the department, is guilty of a felony and shall be fined not less than \$2,500.00 or more than \$25,000.00 for each violation. The court may impose an additional fine of not more than \$25,000.00 for each day during which the unlawful discharge occurred. If the conviction is for a violation committed after a first conviction of the person under this subsection, the court shall impose a fine of not less than \$25,000.00 per day and not more than \$50,000.00 per day of violation. Upon conviction, in addition to a fine, the court in its discretion may sentence the defendant to imprisonment for not more than 2 years or impose probation upon a person for a violation of this part. With the exception of the issuance of criminal complaints, issuance of warrants, and the holding of an arraignment, the circuit court for the county in which the violation occurred has exclusive jurisdiction. However, the person shall not be subject to the penalties of this subsection if the discharge of the effluent is in conformance with and obedient to a rule, order, or permit of the department. In addition to a fine, the attorney general may file a civil suit in a court of competent jurisdiction to recover the full value of the injuries done to the natural resources of the state and the costs of surveillance and enforcement by the state resulting from the violation.

(3) Upon a finding by the court that the actions of a civil defendant pose or posed a substantial endangerment to the public health, safety, or welfare, the court shall impose, in addition to the penalties set forth in subsection (1), a fine of not less than \$500,000.00 and not more than \$5,000,000.00.

(4) Upon a finding by the court that the actions of a criminal defendant pose or posed a substantial endangerment to the public health, safety, or welfare, the court shall impose, in addition to the penalties set forth in subsection (2), a fine of not less than \$1,000,000.00 and, in addition to a fine, a sentence of 5 years' imprisonment.

(5) To find a defendant civilly or criminally liable for substantial endangerment under subsections (3) and (4), the court shall determine that the defendant knowingly or recklessly acted in such a manner as to cause a danger of death or serious bodily injury and that either of the following occurred:

(a) The defendant had an actual awareness, belief, or understanding that his or her conduct would cause a substantial danger of death or serious bodily injury.

(b) The defendant acted in gross disregard of the standard of care that any reasonable person should observe in similar circumstances.

(6) Knowledge possessed by a person other than the defendant under subsection (5) may be attributable to the defendant if the defendant took affirmative steps to shield himself or herself from the relevant information.

(7) ~~Any~~ **A civil** fine or other award ordered paid pursuant to this section shall do both of the following:

(a) Be payable to the state of Michigan and credited to the general fund.

(b) Constitute a lien on any property, of any nature or kind, owned by the defendant.

(8) A lien under subsection (7)(b) shall take effect and have priority over all other liens and encumbrances except those filed or recorded prior to the date of judgment only if notice of the lien is filed or recorded as required by state or federal law.

(9) A lien filed or recorded pursuant to subsection (8) shall be terminated according to the procedures required by state or federal law within 14 days after the fine or other award ordered to be paid is paid.

(10) In addition to any other method of collection, any fine or other award ordered paid may be recovered by right of setoff to any debt owed to the defendant by the state of Michigan, including the right to a refund of income taxes paid.

Sec. 3118. (1) Until October 1, ~~2003~~ **2009**, the department shall collect storm water discharge fees from persons who apply for or have been issued storm water discharge permits as follows:

(a) ~~The A 1-time fee of \$400.00 is required for a permit related solely to a site of construction activity is a 1-time fee of \$125.00 per for each permitted site. The fee shall be submitted by the permit applicant with his or her application for a general or an individual permit or for a certificate of coverage under a general permit. If rules promulgated under this part provide for~~ **For a permit by rule, the fee shall be submitted by the construction site permittee along with his or her notice of coverage. A person needing more than 1 permit may submit a single payment for more than 1 permit and receive appropriate credit. Payment of the fee under this subdivision or verification of prepayment is a necessary part of a valid permit application or notice of coverage under a permit by rule.**

(b) ~~The fee for a permit not related solely to a site of construction activity is \$200.00. For each fiscal year, a person possessing a permit not related solely to a site of construction activity as of January 1 of that fiscal year shall be assessed the fee. The department shall notify those persons of their fee assessments by February 1 of that fiscal year. Payment shall be postmarked no later than March 15 of that fiscal year. An annual fee of \$260.00 is required for a permit related solely to a storm water discharge associated with industrial activity or from a commercial site for which the department determines a permit is needed.~~

(c) **An annual fee of \$500.00 is required for a permit for a municipal separate storm sewer system, unless the permit is issued to a city, a village, a township, or a county or is a single permit authorization for municipal separate storm sewer systems in multiple locations statewide.**

(d) **An annual fee for a permit for a municipal separate storm sewer system issued to a city, village, or township shall be determined by its population in an urbanized area as defined by the United States bureau of the census. The fee shall be based on the latest available decennial census as follows:**

(i) **For a population of 1,000 people or fewer, the annual fee is \$500.00.**

(ii) **For a population of more than 1,000 people, but fewer than 3,001 people, the annual fee is \$1,000.00.**

(iii) **For a population of more than 3,000 people, but fewer than 10,001 people, the annual fee is \$2,000.00.**

(iv) **For a population of more than 10,000 people, but fewer than 30,001 people, the annual fee is \$3,000.00.**

(v) **For a population of more than 30,000 people, but fewer than 50,001 people, the annual fee is \$4,000.00.**

(vi) **For a population of more than 50,000 people, but fewer than 75,001 people, the annual fee is \$5,000.00.**

(vii) **For a population of more than 75,000 people, but fewer than 100,001 people, the annual fee is \$6,000.00.**

(viii) **For a population of more than 100,000 people, the annual fee is \$7,000.00.**

(e) **An annual fee of \$3,000.00 is required for a permit for a municipal separate storm sewer system issued to a county.**

(f) **An annual fee for a single municipal separate storm sewer systems permit authorizing a state or federal agency to operate municipal separate storm sewer systems in multiple locations statewide shall be determined in accordance with a memorandum of understanding between that state or federal agency and the department and shall be based on the projected needs by the department to administer the permit.**

(2) **The permit fees identified in subsection (1) are nonrefundable.**

(3) **A person possessing a permit not related solely to a site of construction activity as of January 1 shall be assessed a fee. The department shall notify those persons of their fee assessments by February 1. Payment shall be postmarked no later than March 15. Failure by the department to send a fee assessment notification by the deadline, or failure of a person to receive a fee assessment notification, does not relieve that person of his or her obligation to pay the fee. If the department does not meet the February deadline for sending the fee assessment, the fee assessment is due not later than 45 days after receiving a fee notification.**

(4) If a storm water permit is issued for a drainage district, the drainage district is responsible for the applicable fee under this section.

(5) ~~(2)~~ The department shall assess interest on all fee payments submitted under this section after the due date. The permittee shall pay an additional amount equal to 0.75% of the payment due for each month or portion of a month the payment remains past due.

(6) ~~(3)~~ The department shall forward all fees **and interest payments** collected under this section to the state treasurer for deposit into the fund.

(7) ~~(4)~~ The department shall make payment of the required fee assessed under this section a condition of **issuance or reissuance** of a permit not related solely to a site of construction activity. ~~at the time of permit issuance or reissuance.~~

~~(5) If a person fails to pay the fee required under this section in full, plus any interest accrued, by October 1 of the year following the date of notification of the fee assessment, the department may revoke the permit held by that person. The failure by a person to pay a fee imposed by this section is a violation of this part and subjects that person to the penalty provisions in section 3115.~~

~~(6) Within 1 year after the reauthorization of the clean water act, the department shall convene a committee to review the storm water discharge fee system provided in this section. The committee shall be composed of a member of the department and representatives of groups affected by the storm water discharge fee. The committee shall make recommendations for changes in the fee system to the department and to the chairpersons of the house and senate appropriations committees.~~

(8) In addition to any other penalty provided in this part, if a person fails to pay the fee required under this section by its due date, the person is in violation of this part and the department may undertake enforcement actions as authorized under this part.

(9) The attorney general may bring an action to collect overdue fees and interest payments imposed under this section.

(10) If the permit is for a municipal separate storm sewer system and the population served by that system is different than the latest decennial census, the permittee may appeal the annual fee determination and submit written verification of actual population served by the municipal separate storm sewer system.

(11) A person who wishes to appeal either a fee or a penalty assessed under this section is limited to an administrative appeal, in accordance with section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631. The appeal shall be filed within 30 days of the department's fee notification under subsection (3).

(12) ~~(7)~~ As used in this section and section 3119:

(a) "Certificate of coverage" means a document issued by the department that authorizes a discharge under a general permit.

(b) ~~(a)~~ "Clean water act" means the federal water pollution control act, chapter 758, 86 Stat. 816, 33 U.S.C. 1251 to 1252, 1253 to 1254, 1255 to 1257, 1258 to 1263, 1265 to 1270, **1273 to 1274**, 1281, 1282 to 1293, 1294 to ~~1299~~ **1301**, 1311 to 1313, 1314 to 1330, 1341 to ~~1345~~ **1346**, 1361 to **1375, 1376 to 1377**, and 1381 to 1387.

(c) ~~(b)~~ "Construction activity" means a human-made earth change or disturbance in the existing cover or topography of land that is 5 acres or more in size, for which a national permit is required pursuant to 40 C.F.R. 122.26(a), and which is described as a construction activity in 40 C.F.R. 122.26(b)(14)(x). Construction activity includes clearing, grading, and excavating activities. Construction activity does not include the practice of clearing, plowing, tilling soil, and harvesting for the purpose of crop production.

(d) ~~(c)~~ "Fee" means a storm water discharge fee authorized under this section.

~~(d) "Fiscal year" means the state fiscal year beginning October 1 and ending September 30.~~

(e) "Fund" means the storm water fund created in section 3119.

(f) "General permit" means a permit issued authorizing a category of similar discharges.

(g) "Individual permit" means a site-specific permit.

(h) "Municipal separate storm sewer system" means all separate storm sewers that are owned or operated by the United States or a state, city, village, township, county, district, association, or other public body created by or pursuant to state law, having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law, such as a sewer district, flood control district, or drainage district or similar entity, or a designated or approved management agency under section 208 of the clean water act, 33 U.S.C. 1288, that discharges to waters of the state. Municipal separate storm sewer system includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. Municipal separate storm sewer system does not include separate storm sewers in very discrete areas, such as individual buildings.

(i) "Notice of coverage" means a notice that a person engaging in construction activity agrees to comply with a permit by rule for that activity.

(j) ~~(f)~~ "Permit" or "storm water discharge permit" means a permit authorizing the discharge of wastewater or any other substance to surface waters of the state under the national pollutant discharge elimination system, pursuant to the clean water act or this part and the rules and regulations promulgated under that act or this part.

(k) "Public body" means the United States, the state of Michigan, a city, village, township, county, school district, public college or university, or single purpose governmental agency, or any other body which is created by federal or state statute or law.

(l) "Separate storm sewer system" means a system of drainage, including, but not limited to, roads, catch basins, curbs, gutters, parking lots, ditches, conduits, pumping devices, or man-made channels, which has the following characteristics:

(i) The system is not a combined sewer where storm water mixes with sanitary wastes.

(ii) The system is not part of a publicly owned treatment works.

(m) ~~(e)~~ "Storm water" means storm water runoff, snowmelt runoff, and surface runoff and drainage.

(n) "Storm water discharge associated with industrial activity" means a point source discharge of storm water from a facility which is defined as an industrial activity under 40 C.F.R. 122.26(b)(14)(i-ix and xi).

Sec. 3119. (1) The storm water fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall expend money from the fund, upon appropriation, only for 1 or more of the following purposes:

(a) Review of storm water permit applications.

(b) Storm water permit development, issuance, reissuance, modification, and termination.

(c) Surface water monitoring to support the storm water permitting process.

(d) Assessment of compliance with storm water permit conditions.

(e) Enforcement against storm water permit violations.

(f) Classification of storm water control facilities.

(g) Not more than 10% of the money in the fund for training for certification of storm water operators and educational material to assist persons regulated under this part.

(h) **Regional or statewide public education to enhance the effectiveness of storm water permits.**

(5) Money in the fund shall not be used to support the direct costs of litigation undertaken to enforce this part.

(6) Upon the expenditure or appropriation of money raised in section 3118 for any other purpose than those specifically listed in this section, authorization to collect fees under section 3118 shall be suspended until such time as the money expended or appropriated for purposes other than those listed in this section is returned to the fund.

(7) **By January 1, 2006 and by January 1 of each year thereafter, the department shall prepare and submit to the governor, the legislature, the chairs of the standing committees of the senate and house of representatives with primary responsibility for issues related to natural resources and the environment, and the chairs of the subcommittees of the senate and house appropriations committees with primary responsibility for appropriations to the department a report that details the departmental activities of the previous fiscal year in administering the department's storm water program that were funded by the fund. This report shall include, at a minimum, all of the following:**

(a) **The number of full-time equated positions performing each of the following functions:**

(i) **Permit issuance and development.**

(ii) **Compliance.**

(iii) **Enforcement.**

(b) **The number of new permit applications received by the department in the preceding year.**

(c) **The number of renewal permits in the preceding year.**

(d) **The number of permit modifications requested in the preceding year.**

(e) **The number of staff hours dedicated to each of the fee categories listed in section 3118.**

(f) **The number of permits issued for fee categories listed in section 3118.**

(g) **The average number of days required for review of a permit from the date the permit application is determined to be administratively complete.**

(h) **The number of permit applications denied.**

(i) **The number of permit applications withdrawn by the applicant.**

(j) **The percentage and number of permit applications that were reviewed for administrative completeness within 10 days of receipt by the department.**

(k) **The percentage and number of permit applications submitted to the department that were administratively complete as received.**

(l) **The percentage and number of new permit applications for which a final action was taken by the department within 180 days.**

(m) **The percentage and number of permit renewals and modifications processed within the required time.**

(n) **The number of permits reopened by the department.**

(o) **The number of unfilled positions dedicated to the department's storm water program.**

(p) The amount of revenue in the fund at the end of the fiscal year.

Sec. 3120. (1) Until October 1, 2009, an application for a new permit, a reissuance of a permit, or a modification of an existing permit under this part authorizing a discharge into surface water, other than a storm water discharge, shall be accompanied by an application fee as follows:

(a) For an EPA major facility permit, \$750.00.

(b) For an EPA minor facility individual permit, a CSO permit, or a wastewater stabilization lagoon individual permit, \$400.00.

(c) For an EPA minor facility general permit, \$75.00.

(2) Within 180 days after receipt of a complete application for a new or increased use permit, the department shall either grant or deny the permit, unless the applicant and the department agree to extend this time period.

(3) By September 30 of the year following the submittal of a complete application for reissuance of a permit, the department shall either grant or deny the permit, unless the applicant and the department agree to extend this time period.

(4) If the department fails to make a decision on an application within the applicable time period under subsection (2) or (3), the department shall return to the applicant the application fee submitted under subsection (1) and the applicant shall not be subject to an application fee and shall receive a 15% annual discount on an annual permit fee required for a permit issued based upon that application.

(5) Until October 1, 2009, a person who receives a permit under this part authorizing a discharge into surface water, other than a stormwater discharge, is subject to an annual permit fee as follows:

(a) For an industrial or commercial facility that is an EPA major facility, \$8,700.00.

(b) For an industrial or commercial facility that is an EPA minor facility, the following amounts:

(i) For a general permit for a low-flow facility, \$150.00.

(ii) For a general permit for a high-flow facility, \$400.00.

(iii) For an individual permit for a low-flow facility, \$1,650.00.

(iv) For an individual permit for a high-flow facility, \$3,650.00.

(c) For a municipal facility that is an EPA major facility, the following amounts:

(i) For an individual permit for a facility discharging 500 MGD or more, \$213,000.00.

(ii) For an individual permit for a facility discharging 50 MGD or more but less than 500 MGD, \$20,000.00.

(iii) For an individual permit for a facility discharging 10 MGD or more but less than 50 MGD, \$13,000.00.

(iv) For an individual permit for a facility discharging less than 10 MGD, \$5,500.00.

(d) For a municipal facility that is an EPA minor facility, the following amounts:

(i) For an individual permit for a facility discharging 10 MGD or more, \$3,775.00.

(ii) For an individual permit for a facility discharging 1 MGD or more but less than 10 MGD, \$3,000.00.

(iii) For an individual permit for a facility discharging less than 1 MGD, \$1,950.00.

(iv) For a general permit for a high-flow facility, \$600.00.

(v) For a general permit for a low-flow facility, \$400.00.

(e) For a municipal facility that is a CSO facility, \$6,000.00.

(f) For an individual permit for a wastewater stabilization lagoon, \$1,525.00.

(g) For an individual or general permit for an agricultural purpose, \$600.00, unless either of the following applies:

(i) The facility is an EPA minor facility and would qualify for a general permit for a low-flow facility, in which case the fee would be \$150.00.

(ii) The facility is an EPA major facility that is not a farmers' cooperative corporation, in which case the fee would be \$8,700.00.

(h) For a facility that holds a permit issued under this part but has no discharge and the facility is connected to and is authorized to discharge only to a municipal wastewater treatment system, an annual permit maintenance fee of \$100.00. However, if a facility does have a discharge or at some point is no longer connected to a municipal wastewater treatment system, the annual permit fee shall be the appropriate fee as otherwise provided in this subsection.

(6) If the person required to pay an application fee under subsection (1) or an annual permit fee under subsection (5) is a municipality, the municipality may pass on the application fee or the annual permit fee, or both, to each user of the municipal facility.

(7) The department shall send invoices for annual permit fees under subsection (5) to all permit holders by December 1 of each year. The fee shall be based on the status of the facility as of October 1 of that year. A person subject to an annual permit fee shall pay the fee not later than January 15 of each year. Failure by the department to send an invoice by the deadline, or failure of a person to receive an invoice, does not relieve that person of his or her obligation to pay the annual permit fee. If the department does not meet the December 1 deadline for sending invoices, the annual permit fee is due not later than 45 days after receiving an invoice. The department shall forward annual permit fees received under this section to the state treasurer for deposit into the national pollutant discharge elimination system fund created in section 3121.

(8) The department shall assess a penalty on all annual permit fee payments submitted under this section after the due date. The penalty shall be an amount equal to 0.75% of the payment due for each month or portion of a month the payment remains past due.

(9) Following payment of an annual permit fee, if a permittee wishes to challenge its annual permit fee under this section, the owner or operator shall submit the challenge in writing to the department. The department shall not process the challenge unless it is received by the department by March 1 of the year the payment is due. A challenge shall identify the facility and state the grounds upon which the challenge is based. Within 30 calendar days after receipt of the challenge, the department shall determine the validity of the challenge and provide the permittee with notification of a revised annual permit fee and a refund, if appropriate, or a statement setting forth the reason or reasons why the annual permit fee was not revised. If the owner or operator of a facility desires to further challenge its annual permit fee, the owner or operator of the facility has an opportunity for a contested case hearing as provided for under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(10) The attorney general may bring an action for the collection of the annual permit fee imposed under this section.

(11) Within 30 days after the effective date of the amendatory act that added this section, the director of the department shall notify each person holding a permit under this part authorizing a discharge into surface water, other than a storm water permit, of the requirements of this section.

(12) As used in this section:

(a) "Agricultural purpose" means the agricultural production or processing of those plants and animals useful to human beings produced by agriculture and includes, but is not limited to, forages and sod crops, grains and feed crops, field crops, dairy animals and dairy products, poultry and poultry products, cervidae, livestock, including breeding and grazing, equine, fish and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, mushrooms, and other similar products, or any other product, as determined by the commission of agriculture, that incorporates the use of food, feed, fiber, or fur. Agricultural purpose includes an operation or facility that produces wine.

(b) "Combined sewer overflow" means a discharge from a combined sewer system that occurs when the flow capacity of the combined sewer system is exceeded at a point prior to the headworks of a publicly owned treatment works during wet weather conditions.

(c) "Combined sewer system" means a sewer designed and used to convey both storm water runoff and sanitary sewage, and which contains lawfully installed regulators and control devices that allow for delivery of sanitary flow to treatment during dry weather periods and divert storm water and sanitary sewage to surface waters during storm flow periods.

(d) "CSO facility" means a facility whose discharge is solely a combined sewer overflow.

(e) "EPA major facility" means a facility that is designated by the United States environmental protection agency as being a major facility under 40 C.F.R. 122.2.

(f) "EPA minor facility" means a facility that is not an EPA major facility.

(g) "Farmers' cooperative corporation" means a farmers' cooperative corporation organized within the limitations of section 98 of 1931 PA 327, MCL 450.98.

(h) "General permit" means a permit suitable for use at facilities meeting eligibility criteria as specified in the permit. With a general permit, the discharge from a specific facility is acknowledged through a certificate of coverage issued to the facility.

(i) "High-flow facility" means a facility that discharges 1 MGD or more.

(j) "Individual permit" means a permit developed for a particular facility, taking into account that facility's specific characteristics.

(k) "Industrial or commercial facility" means a facility that is not a municipal facility.

(l) "Low-flow facility" means a facility that discharges less than 1 MGD.

(m) "MGD" means 1,000,000 gallons per day.

(n) "Municipal facility" means a facility that is designed to collect or treat sanitary wastewater, and is either publicly or privately owned, and serves a residential area or a group of municipalities.

(o) "Wastewater stabilization lagoon" means a type of treatment system constructed of ponds or basins designed to receive, hold, and treat sanitary wastewater for a predetermined amount of time. Wastewater is treated through a combination of physical, biological, and chemical processes.

Sec. 3121. (1) The national pollutant discharge elimination system fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall expend money from the fund, upon appropriation, only to administer the national pollutant discharge elimination system program under this part including, but not limited to, all of the following:

- (a) Water quality standards development and maintenance.
- (b) Permit development and issuance.
- (c) Maintenance of program data.
- (d) Ambient water quality monitoring conducted to determine permit conditions and evaluate the effectiveness of permit requirements.
- (e) Activities conducted to determine a discharger's permit compliance status, including, but not limited to, inspections, discharge monitoring, and review of submittals.

(f) Laboratory services.

(g) Enforcement.

(h) Program administration activities.

(5) By January 1, 2006 and by January 1 of each year thereafter, the department shall prepare and submit to the governor, the legislature, the chairs of the standing committees of the senate and house of representatives with primary responsibility for issues related to natural resources and the environment, and the chairs of the subcommittees of the senate and house appropriations committees with primary responsibility for appropriations to the department a report that details the departmental activities of the previous fiscal year in administering the department's national pollutant discharge elimination system program that were funded by the fund. This report shall include, at a minimum, all of the following as it relates to the department:

(a) The number of full-time equated positions performing each of the following functions:

(i) Permit issuance and development.

(ii) Compliance.

(iii) Enforcement.

(b) The number of permit applications received by the department in the preceding year, including applications for new and increased uses and reissuances.

(c) The number of staff hours dedicated to each of the fee categories listed in section 3120.

(d) The number of permits issued for fee categories listed in section 3120.

(e) The number of permit applications denied.

(f) The number of permit applications withdrawn by the applicant.

(g) The percentage and number of permit applications that were reviewed for administrative completeness within statutory time frames.

(h) The percentage and number of permit applications submitted to the department that were administratively complete as received.

(i) The percentage and number of permit applications for which a final action was taken by the department within statutory time frames for new and increased uses and reissuances.

(j) The number of permits reopened by the department.

(k) The number of unfilled positions dedicated to the national pollutant discharge elimination system program.

(l) The amount of revenue in the fund at the end of the fiscal year.

(6) As used in this section:

(a) "Fund" means the national pollutant discharge elimination system fund created in subsection (1).

(b) "National pollutant discharge elimination system program" means the national pollutant discharge elimination system program delegated to the department under section 402 of title IV of the federal water pollution control act, chapter 758, 86 Stat. 880, 33 U.S.C. 1342, and implemented under this part.

Second: That the Senate and House agree to the title of the bill to read as follows:

A bill to amend 1994 PA 451, entitled "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," by amending sections 3103, 3112, 3113, 3115, 3118, and 3119 (MCL 324.3103, 324.3112, 324.3113, 324.3115, 324.3118, and 324.3119), section 3118 as amended by 1999 PA 35 and section 3119 as amended by 1999 PA 106, and by adding sections 3120 and 3121; and to repeal acts and parts of acts.

Michelle McManus
Patricia L. Birkholz
Conferees for the Senate

James Koetje
Jim Howell
Conferees for the House

Pending the order that, under joint rule 9, the conference report be laid over one day, Senator Hammerstrom moved that the rule be suspended.

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

The question being on the adoption of the conference report,

The first conference report was adopted, a majority of the members serving voting therefor, as follows:

Roll Call No. 27**Yeas—21**

Allen	Garcia	Hardiman	Patterson
Birkholz	George	Jelinek	Sikkema
Bishop	Gilbert	Johnson	Stamas
Brown	Goschka	Kuipers	Toy
Cassis	Hammerstrom	McManus	Van Woerkom
Cropsey			

Nays—17

Barcia	Clark-Coleman	Leland	Schauer
Basham	Clarke	Olshove	Scott
Bernero	Emerson	Prusi	Switalski
Brater	Jacobs	Sanborn	Thomas
Cherry			

Excused—0**Not Voting—0**

In The Chair: Sanborn

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

The recommendation was not concurred in, 2/3 of the members serving not voting therefor.

Senator Sikkema requested the yeas and nays.

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

The recommendation was concurred in, 2/3 of the members serving voting therefor, as follows:

Roll Call No. 28**Yeas—30**

Allen	Cassis	Hammerstrom	Sanborn
Barcia	Cherry	Hardiman	Schauer
Basham	Cropsey	Jelinek	Sikkema
Bernero	Emerson	Johnson	Stamas
Birkholz	Garcia	Kuipers	Switalski
Bishop	George	McManus	Toy
Brater	Gilbert	Patterson	Van Woerkom
Brown	Goschka		

Nays—8

Clark-Coleman	Jacobs	Olshove	Scott
Clarke	Leland	Prusi	Thomas

Excused—0

Not Voting—0

In The Chair: Sanborn

Protest

Senator Scott, under her constitutional right of protest (Art. 4, Sec. 18), protested against the adoption of the first conference report on Senate Bill No. 252 and moved that the statement she made during the discussion of the conference report be printed as her reasons for voting “no.”

The motion prevailed.

Senator Scott’s statement is as follows:

I rise to echo the comments made by my colleague, Liz Brater, the bill’s original sponsor. It is wrong to pass this conference report that breaks the budget deal that both Democrats and Republicans agreed to last year.

But I rise for another reason as well. As a Senator who represents Detroit, I cannot sit quietly by while Republicans once again try to put the burden on my city. When this bill was first passed by the Senate back in June, it passed with the support of every Democrat in this chamber. Since that day, the cost for Detroit included in this bill has risen nearly 400 percent, from \$66,000 to \$213,000. Let me say that again, under the new version of this bill, Detroit will pay almost four times more than called for in the original agreement. At the same time, some communities will pay less in the Republican’s new version, and you can guess who represents those communities.

This bill violates the agreement made between the administration and the Legislature, and it puts an unjustifiable burden on the city of Detroit. For those reasons, I urge my colleagues to vote “no” on this conference report.

Senators Sikkema, Birkholz, McManus, Cropsey and Brater asked and were granted unanimous consent to make statements and moved that the statements be printed in the Journal.

The motion prevailed.

Senator Sikkema’s first statement is as follows:

I am compelled to rise to respond to what can only be characterized as outlandish statements about this conference report. Anybody who says that this breaks the budget agreement we have with the administration is absolutely false. I could use stronger language than that, and I choose not to on the Senate floor. I was at those meetings. I was a participant in the agreement, and this does not break the agreement. It fulfills the agreement to raise \$3 million in fees of the new NPDES system. Fact—and you know Ronald Reagan use to say it—facts are stubborn things. It’s a fact, and anybody who says otherwise is wrong.

It’s also not true that this initiative actually came from the Governor. As was pointed out earlier, it’s kind of a minor point, but the Great Lakes Conservation Task Force report of, I think, it was three years ago pointed out that Michigan is unique among the states in that we do not have a fee system for the NPDES program, and we recommend that we begin going to one. This conference report, in fact, does that for the first time in Michigan.

It’s an incredibly outlandish and false statement to say that rules are needed to enforce the law. That’s absolutely not true. This program was started in 1972. It’s over 30 years old. Various rules have been promulgated over the years. The program exists. There’s history behind it. You don’t need rules to enforce this program which has been enforced for years in Michigan. All this conference report does is it has a fee for the first time.

It’s also not true to say we risk losing EPA authority if we don’t have rules. That’s hogwash. The NPDES federal program is interested in the content of your program. They don’t take away delegation to a state just because the agency has to come back to a legislature to get authority to do something. That’s an outlandish statement that we would risk losing EPA delegation if we don’t have rulemaking authority for the agency.

The Department of Environmental Quality has made outlandish statements in the last few weeks about the issue of rules. One of the things they’ve actually put down on paper is that, “Well, jeeze, you know, we need rules because sometimes we have to act expeditiously.” It takes probably a year to promulgate a rule under the Administrative Procedures Act. We can pass a bill in 10 days in this Legislature. If expeditious action is the issue, we can act faster than they can if there’s some kind of emergency situation that heretofore over 30 years has not developed under this program.

This Legislature, in my opinion, should never ever again be cavalier about giving an agency rulemaking authority because a recent Michigan Supreme Court decision eliminated any effective role we have in overseeing those rules. We should never ever again just carte blanche give them rulemaking authority. If they have an issue and they need to

change the program, and the statute doesn't allow them to do that, they come to us. We will review it, and we will then act in a reasonable fashion.

I am actually astounded and shocked at the irresponsible language being bandied about that we should vote against this fee—money to our budget that relieves the General Fund of pressure, relieves the taxpayers of assuming the burden on this program—because we don't grant the Department of Environmental Quality carte blanche authority to do whatever the heck they want in this state. Never again will we do that. Never. This agency is out of control. Every member who I have talked to in the last several weeks about the NPDES program have come to me with complaints about that agency in terms of how they act. We're not going to just let them do whatever they want to do.

Senator Sikkema's second statement is as follows:

I rise for a second time to speak on this conference report. I will say—I don't hesitate, and I don't apologize for saying this. Anybody who says this violates a budget agreement is not telling the truth. I don't care if you are the Minority Leader of the Michigan Senate; I don't care if you are the Governor of Michigan; I don't care if you are the director of the Department of Natural Resources or the Department of Environmental Quality. If you claim this violates a budget agreement, you are not telling the truth.

Once again, I rise to say it is preposterous to argue. It is preposterous to say if we don't grant the Department of Environmental Quality rulemaking authority, we risk losing delegation of this program. That is silly, and it isn't true. This program is based on the content of the program. If there is a flaw in the Michigan program, the federal EPA will say you need to correct the flaw, and we can correct it in the Legislature. That's what we do. The Constitution of this state doesn't charge the Department of Environmental Quality with protecting the environment. Let me read the Constitution: "The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction." It is our job, not theirs. We will decide what authority they have, not them.

As long as I have a say in this matter, we will never in the Michigan Senate give carte blanche authority to a state agency that has any potential of harming our economic recovery because that is the most important issue facing this state. I say here, today and now, this rules issue is a line in the sand, and it won't be crossed. The Governor can veto a bill; that's fine. It is a line in the sand that we are not going to just cavalierly give this agency rulemaking authority ever again.

Senator Birkholz's statement is as follows:

I would like to begin by thanking my colleagues: Senator Sikkema, who's shown great leadership in this very contentious issue; Senator McManus; and Senator Brater, who's worked hard and diligently from the other side of the aisle.

Let me point out that Michigan does not currently charge a fee to those who would or could discharge pollutants into the surface waters—any surface water—of our state. We are the only state in the Great Lakes basin that does not charge that fee, and for the past several years, have had the taxpayers of this state pay that fee. This bill will implement a new fee for the NPDES program. It will be assessed against the various categories of facilities that could and may discharge into the surface waters of our state, generating approximately \$3 million.

Today we are taking a new and rather large step that will both help to regulate discharges into the waters of our state and preserve legitimate business activity in this state. Many of our state's permit holders want to do the right thing and are working hard and have supported the implementation of this fee, but they want to know that it's reasonable and that it's directly related to the department's real workload in working to regulate these discharges.

The \$3 million may not have been as high as some groups or the Governor wanted. In fact it is less, but they know how important it is to preserve business investment in Michigan. We believe that this is a good compromise—striking an environmental and economic balance.

I would like to clarify that this was recommended in the Great Lakes Conservation Task Force—chaired by Senator Sikkema, a bipartisan group, in 2001. They recommended that we take this action to help carefully regulate the health of our state waters.

Finally, this bill will provide the Legislature with new oversight on how the Department of Environmental Quality will use the money and regulate this program. It will restrict the department's use of rules, but it will also make sure that the Legislature monitors how rules are done, how rules are promulgated, and make sure that they will not overly burden our economic partners, and thus, have a positive impact on our environment and a positive impact on our business community and our economic growth.

The Constitution has specifically delegated the role of protecting Michigan's environmental resources to the legislative branch under Article IV, Section 52. We take that charge very seriously, and we do not want to delegate that away. We want to responsibly uphold the Constitution of this state. I urge your support for this conference report.

Senator McManus' statement is as follows:

I would ask that this body support the conference report of Senate Bill No. 252. I believe that we can be proud of the work that we've done to protect our waters in this particular conference report. This conference report is an excellent compromise to what we passed out of here last July, I think, 38-0.

It does, I think, three very important things. First of all, and probably most importantly, it meets the target set in last year's budget—\$2 million from General Fund and \$3 million in fees, a total of \$5 million.

Secondly, and probably just as important, it provides for legislative oversight. I believe, and I think many of my colleagues would believe, that that is probably one of the most and major responsibilities as an elected official—to provide oversight of departments.

Third, by supporting this conference report, you will keep this program, NPDES, here in Michigan rather than sending it to the feds in another state.

I just want to thank my Senate colleagues, Senators Birkholz and Brater, and my House colleagues for their diligent work on this particular issue. I would urge for your support.

Senator Cropsy's statement is as follows:

I wish to speak a little bit on the rulemaking process itself. I was chairman of the Joint Committee on Administrative Rules when the Department of Corrections, through the Governor's office, in essence circumvented the Joint Committee on Administrative Rules. We ended up having this go all the way through the court system, all the way up to the Supreme Court. The Supreme Court basically found in favor of the executive.

Now, what this happened to do, and I remember talking to at that time Governor Engler afterwards, and I said, "Governor, you have just emasculated the Legislature's oversight of the rulemaking authority." He said, "Well, if you write the laws tight enough as they ought to be written, you don't need rules to start with."

That Governor's perception of what ought to be done and how it ought to be done as far as rulemaking authority—keep this in mind, and this was my big argument when it came to that court case—was when the Legislature gives rulemaking authority to an agency, it gives some of its legislative power to that agency. When you're looking at separation of powers, why on earth would the Legislature want to give the executive branch legislative authority? That's what rulemaking authority really is. I think it's not a Democrat or Republican issue, even though this Governor obviously would like to make it that. It certainly wasn't that issue when we had the previous Governor in power, and those of us on the Republican side took strong exception with the Governor on that whole issue.

This is an issue of is the Legislature going to stand up and be the Legislature, or are we going to start turning our authority over to the executive branch? I don't think we ought to turn our authority over to the executive branch. The fact is, what we were doing after that court decision is when different bills would come up that opened up different sections of laws, we would be taking the rulemaking authority away from the executive branch, as we should, because we have no oversight anymore over the rulemaking authority as we had at one time.

I would strongly urge that we support this conference report. This is something that we did do, and we're in the process of doing under the Engler administration because it was not a partisan issue. It was a separation of powers issue. I would strongly urge that we not break that precedent and start giving the executive branch our authority.

Senator Brater's first statement is as follows:

I feel it is important to explain why I did not sign this conference committee report this morning, considering the fact that I am the sponsor of Senate Bill No. 252. I have been working on this bill with my colleagues here for more than a year—with people in the department, with advocates in the environmental community, as well as business and ag, other stakeholders, and the municipalities. We have all worked very, very hard on this bill, and I appreciate the good dialogues that we've had, but I feel that doing the right thing today on this conference report is of the utmost importance for the future of Michigan's environment.

Let me make it very clear that I still firmly believe that costs for environmental monitoring should be paid not from the General Fund, not by the taxpayers, but by those who are responsible for the polluting. Currently, Michigan is one of only eight states nationwide that requires taxpayers to pay the costs of polluters who jeopardize our state's lakes, rivers, and streams. And we are the only Great Lakes state to do so. In the Governor's budget message, she pioneered the proposal to create a fee-based system for running the NPDES program which monitors the toxics that manufacturers and others are allowed to discharge into our surface water. That was a very fair and equitable thing to do. In efforts to preserve the bill's original intent in conference committee today, Representative Tobocman and I proposed two amendments to the conference report that would have removed the House-proposed exemption for agriculture and also restored the rule promulgation authority of the DEQ, which is very important to preserve in order to give the DEQ the ability to enforce this law delegated to us by the EPA, and we don't want to lose that delegation.

These amendments came in response to the House recommendations that the bill to charge fees to NPDES permit holders include an exemption for specific farms and ag businesses totaling tens of thousands of dollars. Most of the additional cost is transferred to the ratepayers of the city of Detroit water utility. This legislation was originally part of the FY 2003 budget compromise, however, the bill has been stalled in conference committee since October of last year, leaving the program without funding for the full year.

I believe that in mandating full funding of the DEQ and not allowing the agriculture exemption, we remain faithful to our original budget agreement, or we would remain faithful if we did that. That's not what this conference report does. These fees place the financial responsibility on the polluters, rather than on the backs of taxpayers. Not only is this sound environmental policy, it is sound economic policy as well. Unfortunately, not all of my colleagues agree.

The House version, as I said, removed the rule promulgation requirement from the DEQ. In addition to violating our budget agreement, the removal of the DEQ's rule promulgation authority threatens to put Michigan out of compliance with federal requirements. According to Director Chester, this may result in the program reverting to the EPA regional office in Chicago. Sending Michigan's businesses, municipalities, and other dischargers to Chicago to obtain permits flies in the face of the Governor's overall commitment to protect our environment and improve our economy. It flies in the face of the work we in this chamber have done to accomplish that as well.

Therefore, I urge you to join me in opposing this conference report this morning.

Senator Brater's second statement is as follows:

I have a number of things that I feel are important to comment on—the previous speaker's comments.

First of all, look at what this conference report is doing in terms of reallocating the funding to protect Michigan agriculture. It is certainly an objective of all of us to protect Michigan agriculture, but Michigan agriculture is a discharger and needs to bear part of the burden in protecting water quality in our lakes and streams. We do a lot of talk and lip service in the Legislature about reinvesting in our cities, and to continually disproportionately put a burden on one city to balance our budget on the backs of our citizens who are the least able to afford to pay in the entire state is unconscionable. I sincerely hope that this Legislature—when we talk about wanting to save farmland by reinvesting in cities that we will act and not just speak to that objective.

Second, the rulemaking authority that this conference reports revokes is not just of this particular program, but of all the programs that the DEQ runs—as I read the language in the bill. Almost all of us were here under the previous administration and could have voted to remove rulemaking ability under the former Governor. We did not! So I only have to question why all of the sudden we have become capable of removing it under this Governor?

The director of the department is a former official of the enforcement division of the U.S. EPA. He knows well what he is talking about when he warns us that by removing this rulemaking ability from the department that we are placing in jeopardy our delegation of running this program from the EPA and that we are very much in risk at sending this program to Chicago, which I know that the business communities, municipalities, and other dischargers do not want to see happen.

Now just let me remind you what we are talking about here. We are talking about regulating dangerous chemicals that are discharged by permit into the bodies of this state—bodies of water, surface water. They are chemicals like cadmium, PCBs, and mercury. The presence of these chemicals, especially mercury, in our lakes and streams has resulted in the department having to issue fish advisories warning people, especially pregnant women and children, not to eat excessive amounts of fish from our lakes and streams. We are depriving our people of the ability and the pleasure of fishing and eating at will out of our streams. I'm talking about the considerable tourism business where people would like to come here, fish, and be able to eat the fish that they take out of our streams. This program directly affects our ability to keep that water clean. It also affects the ability for us to swim on our beaches. It regulates combined sewer overflows, and we know that there have been beach closures in the past. Unfortunately, we are likely to have them again in the near future. We want to make sure that our lakes and streams are swimmable in this state.

Third, we do have to keep an eye on the drinking water. No drinking water supply has been threatened, but we want to make sure that we keep it that way. Some communities in this state do draw their water from our surface water for drinking water purposes. So we are taking on a huge responsibility. We need to make sure we fulfill our commitment to the citizens to the state of Michigan to keep our environment clean.

By unanimous consent the Senate returned to the order of

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

Senate Bill No. 395

Senate Bill No. 687

Senate Bill No. 474

The motion prevailed.

The following messages from the Governor were received and read:

February 5, 2004

I respectfully submit to the Senate, pursuant to Section 6 of Article 5 of the Michigan Constitution of 1963, the following appointments and reappointment to state office under Section 301 of the Nonprofit Healthcare Corporation Reform Act, 1980 PA 350, MCL 550.1301:

Blue Cross Blue Shield of Michigan Board of Directors

Mr. John M. Hamilton of 7403 River Road, Marine City, Michigan 48039, county of St. Clair, succeeding George Perles, whose term has expired, representing the public, for a term commencing February 18, 2004 and expiring February 18, 2006.

Ms. Teola P. Hunter of 8120 East Jefferson, Condo 2M, Detroit, Michigan 48214, county of Wayne, succeeding Sharon Wise, whose term has expired, representing the public and retired individuals 62 years of age or older, for a term commencing February 18, 2004 and expiring February 18, 2006.

Mr. Cullan F. Meathe of 217 Touraine Road, Grosse Pointe Farms, Michigan 48236, county of Wayne, succeeding Stephen Terry, whose term has expired, representing the public, for a term commencing February 18, 2004 and expiring February 18, 2006.

Mr. James G. Agee of 9416 Lookout Pointe, Laingsburg, Michigan 48848, county of Shiawassee, reappointed to represent the public and retired individuals 62 years of age or older, for a term expiring February 18, 2006.

February 6, 2004

I respectfully submit to the Senate, pursuant to Section 6 of Article 5 of the Michigan Constitution of 1963, the following appointment 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. Benjamin J. Friedman, a Democrat, of 25105 East Roycourt, Huntington Woods, Michigan 48070, county of Oakland, succeeding the Honorable Roman S. Gribbs, whose term has expired, appointed for a term commencing February 6, 2004 and expiring December 31, 2007.

Sincerely,
Jennifer M. Granholm
Governor

The appointments were referred to the Committee on Government Operations.

Messages from the House

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

Senate Bill No. 506

Senate Bill No. 557

Senate Bill No. 806

Senate Bill No. 502

The motion prevailed.

Senate Bill No. 334, entitled

A bill to amend 1951 PA 51, entitled "An act to provide for the classification of all public roads, streets, and highways in this state, and for the revision of that classification and for additions to and deletions from each classification; to set up and establish the Michigan transportation fund; to provide for the deposits in the Michigan transportation fund of specific taxes on motor vehicles and motor vehicle fuels; to provide for the allocation of funds from the Michigan transportation fund and the use and administration of the fund for transportation purposes; to set up and establish the truck safety fund; to provide for the allocation of funds from the truck safety fund and administration of the fund for truck safety purposes; to set up and establish the Michigan truck safety commission; to establish certain standards for road contracts for certain businesses; to provide for the continuing review of transportation needs within the state; to authorize the state transportation commission, counties, cities, and villages to borrow money, issue bonds, and make pledges of funds for transportation purposes; to authorize counties to advance funds for the payment of deficiencies necessary for the payment of bonds issued under this act; to provide for the limitations, payment, retirement, and security of the bonds and pledges; to provide for appropriations and tax levies by counties and townships for county roads; to authorize contributions by townships for county roads; to provide for the establishment and administration of the state trunk line fund, critical bridge fund, comprehensive transportation fund, and certain

other funds; to provide for the deposits in the state trunk line fund, critical bridge fund, comprehensive transportation fund, and certain other funds of money raised by specific taxes and fees; to provide for definitions of public transportation functions and criteria; to define the purposes for which Michigan transportation funds may be allocated; to provide for Michigan transportation fund grants; to provide for review and approval of transportation programs; to provide for submission of annual legislative requests and reports; to provide for the establishment and functions of certain advisory entities; to provide for conditions for grants; to provide for the issuance of bonds and notes for transportation purposes; to provide for the powers and duties of certain state and local agencies and officials; to provide for the making of loans for transportation purposes by the state transportation department and for the receipt and repayment by local units and agencies of those loans from certain specified sources; and to repeal acts and parts of acts," by amending section 13 (MCL 247.663), as amended by 1999 PA 54.

Substitute (H-2).

The question being on concurring in the substitute made to the bill by the House,

The substitute was concurred in, a majority of the members serving voting therefor, as follows:

Roll Call No. 29

Yeas—38

Allen	Clark-Coleman	Jacobs	Sanborn
Barcia	Clarke	Jelinek	Schauer
Basham	Cropsey	Johnson	Scott
Bernero	Emerson	Kuipers	Sikkema
Birkholz	Garcia	Leland	Stamas
Bishop	George	McManus	Switalski
Brater	Gilbert	Olshove	Thomas
Brown	Goschka	Patterson	Toy
Cassis	Hammerstrom	Prusi	Van Woerkom
Cherry	Hardiman		

Nays—0

Excused—0

Not Voting—0

In The Chair: Sanborn

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

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

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

The President pro tempore, Senator Birkholz, resumed the Chair.

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 pro tempore, Senator Birkholz, designated Senator Brown as Chairperson.

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

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.

Senate Bill No. 653, entitled

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending section 20129a (MCL 324.20129a), as amended by 1999 PA 30.

Senate Bill No. 875, entitled

A bill to amend 1990 PA 100, entitled "City utility users tax act," by amending section 5 of chapter 1 (MCL 141.1155), as amended by 1998 PA 241.

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

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

Senate Bill No. 432, entitled

A bill to amend 1954 PA 116, entitled "Michigan election law," by amending sections 31, 73, 283, 393, 509t, 509y, 509aa, 561a, 624, 624a, 686, 727, 745, 761, 769, 797a, 798c, 799a, 803, 842, and 931 (MCL 168.31, 168.73, 168.283, 168.393, 168.509t, 168.509y, 168.509aa, 168.561a, 168.624, 168.624a, 168.686, 168.727, 168.745, 168.761, 168.769, 168.797a, 168.798c, 168.799a, 168.803, 168.842, and 168.931), section 31 as amended by 1999 PA 220, sections 73, 283, 393, and 686 as amended by 1999 PA 216, section 509t as amended by 1998 PA 21, sections 509y and 509aa as added by 1994 PA 441, section 624 as amended by 1999 PA 218, section 624a as amended by 1988 PA 116, sections 727 and 769 as amended by 1995 PA 261, section 761 as amended by 1996 PA 207, sections 797a and 931 as amended by 1996 PA 583, section 798c as amended by 1990 PA 109, and sections 799a and 803 as amended by 1997 PA 137; and to repeal acts and parts of acts.

Substitute (S-2).

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

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

Senate Bill No. 350, entitled

A bill to amend 1954 PA 116, entitled "Michigan election law," by amending sections 560, 666, 706, and 777 (MCL 168.560, 168.666, 168.706, and 168.777), section 706 as amended by 1985 PA 160.

Substitute (S-2).

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

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

Senate Bill No. 862, entitled

A bill to amend 1975 PA 228, entitled "Single business tax act," (MCL 208.1 to 208.145) by adding section 31a.

Substitute (S-2).

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

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

Senate Bill No. 863, entitled

A bill to amend 1967 PA 281, entitled "Income tax act of 1967," (MCL 206.1 to 206.532) by adding section 51f.

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. 865, entitled

A bill to amend 1953 PA 189, entitled "An act to provide for the taxation of lessees and users of tax-exempt property," (MCL 211.181 to 211.182) by adding section 1a.

Substitute (S-2).

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

The Committee of the Whole reported back to the Senate, favorably and with a substitute therefor, the following bill:
Senate Bill No. 867, entitled

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending section 51105 (MCL 324.51105), as amended by 1996 PA 451.

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. 868, entitled

A bill to amend 1985 PA 224, entitled "Enterprise zone act," by amending section 21c (MCL 125.2121c), as amended by 1998 PA 242.

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. 870, entitled

A bill to amend 2000 PA 146, entitled "Obsolete property rehabilitation act," by amending section 10 (MCL 125.2790).

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. 871, entitled

A bill to amend 1992 PA 147, entitled "Neighborhood enterprise zone act," by amending section 9 (MCL 207.779), as amended by 2003 PA 127.

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. 872, entitled

A bill to amend 1984 PA 385, entitled "Technology park development act," by amending section 12 (MCL 207.712), as amended by 1996 PA 445.

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. 866, entitled

A bill to amend 1964 PA 284, entitled "City income tax act," (MCL 141.501 to 141.787) by adding section 635a.

Substitute (S-2).

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

The Committee of the Whole reported back to the Senate, favorably and with a substitute therefor, the following bill:
Senate Bill No. 703, entitled

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending section 80205 (MCL 324.80205), as added by 2000 PA 229.

Substitute (S-2).

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

The Committee of the Whole reported back to the Senate, favorably and with a substitute therefor, the following bill:
Senate Bill No. 864, entitled

A bill to amend 1893 PA 206, entitled "The general property tax act," (MCL 211.1 to 211.157) by adding section 7gg. Substitute (S-3).

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 returned to the order of
Third Reading of Bills

Recess

Senator Hammerstrom moved that the Senate recess subject to the call of the Chair.
The motion prevailed, the time being 11:53 a.m.

12:09 p.m.

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

Senator Hammerstrom moved that the rules be suspended and that the following bills, now on the order of Third Reading of Bills, be placed on their immediate passage at the head of the Third Reading of Bills calendar:

Senate Bill No. 432
Senate Bill No. 350

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

The following bill was read a third time:

Senate Bill No. 432, entitled

A bill to amend 1954 PA 116, entitled "Michigan election law," by amending sections 73, 283, 393, 499, 509m, 509n, 509t, 509aa, 686, 735, 795, 798c, 799a, 803, and 842 (MCL 168.73, 168.283, 168.393, 168.499, 168.509m, 168.509n, 168.509t, 168.509aa, 168.686, 168.735, 168.795, 168.798c, 168.799a, 168.803, and 168.842), sections 73, 283, 393, 509n, and 686 as amended by 1999 PA 216, section 499 as amended by 1995 PA 213, sections 509m and 509aa as added by 1994 PA 441, section 509t as amended by 1998 PA 21, section 795 as amended by 2002 PA 91, section 798c as amended by 1990 PA 109, and sections 799a and 803 as amended by 1997 PA 137, and by adding sections 18, 523a, 813, and 829; and to repeal acts and parts of acts.

The question being on the passage of the bill,

Senator Clark-Coleman offered the following substitute:

Substitute (S-3).

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

Senator Schauer requested the yeas and nays.

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

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

Roll Call No. 30

Yeas—16

Barcia	Cherry	Jacobs	Schauer
Basham	Clark-Coleman	Leland	Scott
Bernero	Clarke	Olshove	Switalski
Brater	Emerson	Prusi	Thomas

Nays—22

Allen	Garcia	Jelinek	Sanborn
Birkholz	George	Johnson	Sikkema

Bishop
Brown
Cassis
Cropsey

Gilbert
Goschka
Hammerstrom
Hardiman

Kuipers
McManus
Patterson

Stamas
Toy
Van Woerkom

Excused—0

Not Voting—0

In The Chair: Sanborn

Senator Brater offered the following amendments:

1. Amend page 16, following line 11, by inserting:

“Sec. 726. ~~No ballots~~ **A ballot** shall **not** be delivered to an elector by ~~any~~ a person other than 1 of the inspectors of election and only within the polling place, except as provided in this act for absent voters² **voter ballots and election by mail ballots.**”

2. Amend page 17, following line 20, by inserting:

“Sec. 750a.(1) **Subject to this section and section 750b, a city, township, or village clerk or the school district election coordinator may conduct a local election by mail in the city, township, village, or school district, under the supervision of the secretary of state. In deciding to conduct a local election by mail, a city, township, or village clerk or the school district election coordinator shall consider requests from the governing body of the city, township, village, or school district and whether conducting the election by mail is economically and administratively feasible.**

(2) **The August primary held under section 534, the general November election, and any other election in which a candidate for statewide office, judicial office, legislative office, or countywide office is nominated or elected shall be conducted as an election by mail.**

(3) **Not later than January 1, 2005, a city, township, or village clerk or the school district election coordinator shall advise the governing body of the city, township, village, or school district for which the clerk or school district election coordinator is the election official as to each local election held in that city, township, village, or school district that will be conducted as an election by mail. Periodically, the clerk or school district election coordinator may review its decision of whether a local election will be conducted as an election by mail. If an earlier decision to conduct or not conduct a local election as an election by mail is changed, the clerk or school district election coordinator shall notify the governing body of the city, township, village, or school district not later than the third Tuesday in January of the year in which the election is to be held of that change. This subsection does not apply to an election required to be held as an election by mail under subsection (2).**

(4) **The secretary of state shall promulgate rules in the manner prescribed in this act to provide procedures for conducting an election by mail.**

Sec. 750b. (1) **A city, township, or village clerk or a school district election coordinator that conducts an election by mail under section 750a shall conduct the election by mail as provided in this section.**

(2) **The clerk or school district election coordinator shall designate 1 or more places of deposit in the city, township, village, or school district for voters to return voted ballots for the election by mail. The clerk or school district election coordinator shall provide that the places designated for the deposit of voted ballots in the city, township, village, or school district be open on the date of the election for a period of 13 hours or more, beginning no later than 7 a.m. and ending no earlier than 8 p.m., as determined by the clerk or school district election coordinator.**

(3) **The city, township, or village clerk or the school district election coordinator shall send by nonforwardable mail an official ballot with a pre-addressed, postage paid return identification envelope and a secrecy envelope to each voter who is registered in the city, township, village, or school district as of the thirtieth day before the date of the election by mail. The clerk or school district election coordinator shall address the ballot to the registered voter as that voter’s name appears on the registration records of that voter. Except as otherwise provided in this subsection and subsection (8), the clerk or school district election coordinator shall mail the official ballots and envelopes during the period beginning on the twentieth day before the date of the election by mail and ending on the fourteenth day before the date of the election by mail. For a statewide election by mail, the secretary of state shall prescribe in rules promulgated under section 750a(4) the date on which the official ballots and envelopes for the statewide election by mail are to be mailed by a clerk or school district election coordinator under this subsection. However, the secretary of state shall provide in those rules that all ballots shall be mailed by the fourteenth day before the date of the election by mail.**

(4) For a primary election, the election by mail ballot shall contain a section for the selection of candidates from each political party that is participating in the primary election. The instructions accompanying the primary election by mail ballots shall state clearly that the voter may vote for the appropriate number of candidates of 1 party only and that a primary ballot on which candidates from more than 1 party are selected will not be counted.

(5) For an elector who has applied to register to vote on or before the close of registration and is not listed in the registration records of the city, township, village, or school district, the city, township, or village clerk or the school district election coordinator shall proceed as prescribed in section 509y. If the elector meets the requirements of section 509y, the clerk or school district election coordinator shall make the official ballot, the return identification envelope, and the secrecy envelope available at the clerk's office or other place designated by the clerk or school district election coordinator. The elector who receives the official ballots and envelopes under this subsection shall do all of the following:

(a) Vote at the election in the clerk's office or other place designated by the clerk or school district election coordinator or vote by mail.

(b) Mark the ballot, sign the return identification envelope, and comply with the instructions provided with the ballot.

(c) Return the ballot in the return identification envelope to the clerk or school district election coordinator.

(6) A ballot or ballot label used in an election by mail shall contain the following warning:

"A person who, by use of force or other means, unduly influences an elector to vote in a particular manner or to refrain from voting is subject to imprisonment or to a fine, or both."

(7) In order to vote an election by mail ballot received under subsection (3), a registered voter shall mark the ballot, sign the return identification envelope supplied with the ballot, and comply with the instructions provided with the ballot. The voter may return the marked ballot to the appropriate city, township, or village clerk or school district election coordinator by depositing it in the United States mail or with another public postal service, express mail service, parcel post service, or common carrier. The voter may return the marked ballot to the appropriate city, township, or village clerk or school district election coordinator by depositing it at the office of the clerk or school district election coordinator or other place of deposit designated by the clerk or school district election coordinator. The voter shall return the ballot in the return identification envelope supplied with the ballot or the ballot will not be counted. An election by mail ballot must be received at the office of the appropriate clerk or school district election coordinator or other place of deposit designated by the clerk or school district election coordinator not later than the end of the period determined under subsection (2) on the date of the election.

(8) A voter may obtain a replacement election by mail ballot if the ballot is destroyed, spoiled, lost, or not received by the voter. A voter who seeks a replacement ballot shall sign a sworn statement that the ballot was destroyed, spoiled, lost, or not received by the voter and submit the statement to the appropriate clerk or school district election coordinator before the end of the period determined under subsection (2). The clerk or school district election coordinator shall keep a record of each replacement election by mail ballot provided under this subsection. The clerk or school district election coordinator shall designate the clerk's office or a central location in the city, township, village, or school district in which the election is held as the single place to obtain a replacement election by mail ballot under this subsection. A clerk or school district election coordinator may mail replacement ballots 5 days or more before the date of the election by mail. The clerk or school district election coordinator may deliver in person to a registered voter a replacement ballot up until and including the date of the election by mail.

(9) Election officials shall count an election by mail ballot only if that ballot meets all of the following requirements:

(a) The ballot is returned in the return identification envelope.

(b) The return identification envelope is signed by the voter to whom the ballot was issued.

(c) The signature is verified as provided in subsection (10).

(10) The city, township, or village clerk or school district election coordinator shall verify the signature of each voter on the return identification envelope with the signature of the voter on the voter's registration card, according to the procedures prescribed in this act and rules promulgated by the secretary of state.

(11) If the clerk, school district election coordinator, or other election official determines that a voter to whom a replacement election by mail ballot has been issued has voted more than once, an election official shall not count any ballot cast by that voter. A clerk, school district election coordinator, or other election official who becomes aware of a person who votes or attempts to vote by means of both an original ballot and a replacement ballot shall report that information to the prosecuting attorney for that county and to the secretary of state.

(12) An election by mail ballot or a voter casting a ballot at an election by mail, or both, is subject to challenge as prescribed in this act."

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

Senator Schauer requested the yeas and nays.

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

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

Roll Call No. 31

Yeas—16

Barcia	Cherry	Jacobs	Schauer
Basham	Clark-Coleman	Leland	Scott
Bernero	Clarke	Olshove	Switalski
Brater	Emerson	Prusi	Thomas

Nays—22

Allen	Garcia	Jelinek	Sanborn
Birkholz	George	Johnson	Sikkema
Bishop	Gilbert	Kuipers	Stamas
Brown	Goschka	McManus	Toy
Cassis	Hammerstrom	Patterson	Van Woerkom
Cropsey	Hardiman		

Excused—0

Not Voting—0

In The Chair: Sanborn

Senator Leland offered the following amendment:

1. Amend page 17, following line 20, by inserting:

“Sec. 758. ~~(1) For the purposes of~~ **As used in** this act, “absent voter” means a qualified and registered elector who ~~meets 1 or more of the following requirements:~~

~~(a) On account of physical disability, cannot without another’s assistance attend~~ **wishes to vote without attending** the polls on the day of an election.

~~(b) On account of the tenets of his or her religion, cannot attend the polls on the day of election.~~

~~(c) Cannot attend the polls on the day of an election in the precinct in which he or she resides because of being an election precinct inspector in another precinct.~~

~~(d) Is 60 years of age or older.~~

~~(e) Is absent or expects to be absent from the township or city in which he or she resides during the entire period the polls are open for voting on the day of an election.~~

~~(f) Cannot attend the polls on election day because of being confined in jail awaiting arraignment or trial.~~

~~(2) Subsection (1) does not apply to~~ **Absent voter does not include** a person who has moved outside of this state, regardless of length of his or her residence outside of this state, and who no longer maintains an actual residence in this state. The storage of personal effects or household goods, the ownership of property that is rented or leased to others, or occasional brief visits to a former domicile in this state while residing outside of this state for most of the year does not constitute a residence for voting purposes in this state, except for each of the following:

(a) A person described in section 1 of article II of the state constitution of 1963 and statutes enacted under that section.

(b) A person described in section 759a.

Sec. 759. (1) At any time during the 75 days before a primary **election** or special primary **election**, but not later than 2 p.m. of the Saturday immediately before the primary **election** or special primary **election**, an elector who qualifies to vote as an absent voter ~~, as defined in section 758,~~ may apply for an absent voter ballot. The elector shall apply in person or by mail with the clerk of the township, city, or village in which the elector is registered. An application

received before a primary **election** or special primary **election** may be for either that primary **election** only, or for that primary **election** and the election that follows.

(2) Except as otherwise provided in subsection (1), at any time during the 75 days before an election, but not later than 2 p.m. of the Saturday before the election, an elector who qualifies to vote as an absent voter ~~, as defined in section 758,~~ may apply for an absent voter ballot. The elector shall apply in person or by mail with the clerk of the township, city, or village in which the voter is registered.

(3) An application for an absent voter ballot under this section may be made in any of the following ways:

(a) By a written request signed by the ~~voter stating the statutory grounds for making the application~~ **elector**.

(b) On an absent voter ballot application form provided for that purpose by the clerk of the city, township, or village.

(c) On a federal postcard application.

(4) An applicant for an absent voter ballot shall sign the application. A clerk or assistant clerk shall not deliver an absent voter ballot to an applicant who does not sign the application. ~~A person other~~ **Other** than the applicant; a member of the applicant's immediate family; a person residing in the applicant's household; a person whose job normally includes the handling of mail, but only during the course of his or her employment; a registered elector requested by the applicant **to return the application**; or a clerk, assistant of the clerk, or other authorized election official, **a person** shall not be in possession of a signed absent voter ballot application. A registered elector who is requested by the applicant to return his or her absent voter ballot application shall sign the certificate on the absent voter ballot application.

(5) The clerk of the city, township, or village shall have absent voter ballot application forms available in the office of the clerk at all times and shall furnish an absent voter ballot application form to anyone upon a verbal or written request. The absent voter ballot application shall be in substantially the following form:

"Application for absent voter ballot for:

The primary **election** or special primary election to be held on ~~....., 19....~~ **[date]**.

The election to be held on ~~....., 19....~~ **[date]**.

(Check applicable election or elections)

I,, a qualified and registered elector of the precinct of the township of or village of or of the ward of the city of, in the county of and state of Michigan, apply for an official ballot, or ballots, to be voted by me at the election or elections as requested in this application.

~~The statutory grounds on which I base my request are:~~

~~I expect to be absent from the community in which I am registered for the entire time the polls are open on election day.~~

~~I am physically unable to attend the polls without the assistance of another.~~

~~I cannot attend the polls because of the tenets of my religion.~~

~~I have been appointed an election precinct inspector in a precinct other than the precinct where I reside.~~

~~I am 60 years of age or older.~~

~~I cannot attend the polls because I am confined to jail awaiting arraignment or trial.~~

(Check applicable reason)

Send absent voter ballot to me at:

.....

(Street No. or R.R.)

.....

(Post Office) (State) **Zip Code**

My registered address.....

(Street No. or R.R.)

.....

(Post Office) (State) **Zip Code**

Date.....

I ~~declare~~ **certify** that the statements in this absent voter ballot application are true.

.....

(Signature)

WARNING

A person making a false statement in this absent voter ballot application is guilty of a misdemeanor. It is a violation of Michigan election law for a person other than those listed in the instructions to return, offer to return, agree to return, or solicit to return your absent voter ballot application to the clerk. An assistant authorized by the clerk who receives absent voter ballot applications at a location other than the office of the clerk must have credentials signed by the clerk. Ask to see his or her credentials before entrusting your application with a person claiming to have the clerk's authorization to return your application.

Certificate of Authorized Registered
Elector Returning Absent Voter
Ballot Application

I certify that my name is, my address is, and my date of birth is; that I am delivering the absent voter ballot application of at his or her request; that I did not solicit or request to return the application; that I have not made any markings on the application; that I have not altered the application in any way; that I have not influenced the applicant; and that I am aware that a false statement in this certificate is a violation of Michigan election law.

(Date) (Signature)''

(6) The following instructions for an applicant for an absent voter ballot shall be included with each application furnished an applicant:

INSTRUCTIONS FOR APPLICANTS FOR ABSENT VOTER BALLOTS

Step 1. After completely filling out the application, sign and date the application in the place designated. Your signature must appear on the application or you will not receive an absent voter ballot.

Step 2. Deliver the application by 1 of the following methods:

(a) Place the application in an envelope addressed to the appropriate clerk and place the necessary postage upon the return envelope and deposit it in the United States mail or with another public postal service, express mail service, parcel post service, or common carrier.

(b) Deliver the application personally to the office of the clerk, to the clerk, or to an authorized assistant of the clerk.

(c) In either (a) or (b), a member of the immediate family of the voter including a father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandparent, or grandchild or a person residing in the voter's household may mail or deliver the application to the clerk for the applicant.

(d) ~~In the event~~ If an applicant cannot return the application in any of the above methods, the applicant may select any registered elector to return the application. The person returning the application must sign and return the certificate at the bottom of the application.

(7) A person who prints and distributes absent voter ballot applications shall print on the application the warning, certificate of authorized registered elector returning absent voter ballot application, and instructions required by this section.

(8) A person who makes a false statement in an absent voter ballot application is guilty of a misdemeanor. A person who forges a signature on an absent voter ballot application is guilty of a felony. A person who is not authorized in this act and who both distributes absent voter ballot applications to absent voters and returns those absent voter ballot applications to a clerk or assistant of the clerk is guilty of a misdemeanor.

Sec. 759b. (1) ~~Any~~ A registered elector may apply for ~~an absent voter ballots ballot~~ **an absent voter ballot** at any time ~~prior to before~~ **prior to before** 4 p.m. on election day if ~~he shall have become physically disabled or shall be absent from the city or township because of sickness or death in the family which~~ **an event** has occurred at a time ~~which has~~ **that** made it impossible to apply for absent voter ballots by the statutory deadline. The application shall be called an emergency absent voter **ballot** application.

(2) Emergency absent voter **ballot** applications may be made by letter or on a form **prescribed by the secretary of state and** provided by the clerk. The application shall set forth that the voter is qualified to vote in the election, ~~stating the statutory reason for applying for an emergency absent voter ballot and that the reason for applying after the statutory deadline~~ **an event** occurred at such a time to make it impossible to file an application for **an absent voter ballots ballot** by the statutory deadline. **The secretary of state shall prescribe a standard emergency absent voter ballot application form, including the size of the form and the color of paper upon which the form is printed.**

(3) ~~Any~~ A person intentionally making a false statement in ~~such~~ **an emergency absent voter ballot** application is guilty of a felony. ~~Any~~ A person aiding or abetting ~~any~~ **another** person to make a false statement ~~on such~~ **in an emergency absent voter ballot** application is guilty of a felony.

(4) Upon receipt by the clerk of a valid application for an emergency absent voter ballot, the clerk may deliver the **absent voter** ballots to the applicant in person, through a deputy or an election assistant, or ~~he may deliver them~~ at his or her office to a person named by the applicant in the **emergency absent voter ballot** application. The **absent voter** may return the **absent voter** ballots to the clerk ~~in the sealed envelope provided therefor~~ in any manner. ~~he sees fit. To~~ **However, to be valid, ballots must be returned the absent voter shall return the absent voter ballots to the clerk in the sealed envelope provided for that reason and** in time to be delivered to the polls ~~prior to before~~ **8 p.m. on election day.**

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

Senator Schauer requested the yeas and nays.

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

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

Roll Call No. 32

Yeas—16

Barcia
Basham

Cherry
Clark-Coleman

Jacobs
Leland

Schauer
Scott

Bernero
Brater

Clarke
Emerson

Olshove
Prusi

Switalski
Thomas

Nays—22

Allen
Birkholz
Bishop
Brown
Cassis
Cropsey

Garcia
George
Gilbert
Goschka
Hammerstrom
Hardiman

Jelinek
Johnson
Kuipers
McManus
Patterson

Sanborn
Sikkema
Stamas
Toy
Van Woerkom

Excused—0

Not Voting—0

In The Chair: Sanborn

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. 33

Yeas—22

Allen
Birkholz
Bishop
Brown
Cassis
Cropsey

Garcia
George
Gilbert
Goschka
Hammerstrom
Hardiman

Jelinek
Johnson
Kuipers
McManus
Patterson

Sanborn
Sikkema
Stamas
Toy
Van Woerkom

Nays—16

Barcia
Basham
Bernero
Brater

Cherry
Clark-Coleman
Clarke
Emerson

Jacobs
Leland
Olshove
Prusi

Schauer
Scott
Switalski
Thomas

Excused—0

Not Voting—0

In The Chair: Sanborn

The Senate agreed to the title of the bill.

Protests

Senators Leland, Clark-Coleman, Jacobs and Brater, under their constitutional right of protest (Art. 4, Sec. 18), protested against the passage of Senate Bill No. 432 and moved that the statements they made during the discussion of the bill be printed as their reasons for voting “no.”

The motion prevailed.

Senator Leland’s statement is as follows:

This is a simple but important amendment to this bill. This amendment simply allows “no-reason” absentee voting. From time to time, especially near election time, we see report after report complaining that people don’t vote. Year after year, the number creeps lower and lower. The fact is, people today lead very busy lives, and it is sometimes difficult to make certain that you are near a polling place on Election Day. Whether you are called out of town for business or at the last moment or whether you find yourself in a meeting on the other side of town, when the polls close it’s getting harder and harder for busy people to get themselves to the polls on Election Day.

Also many of my constituents have transportation problems which make it difficult to get to the polls. They don’t fit into any kind of current categories which are allowed to vote by absentee. I have a solution to this. We simply allow people to vote absentee if they wish to do so. Voting will increase; it’s as simple as that. If we make it easier to vote and if we increase the options of people to cast a ballot, voting turnout will increase.

When you vote on this amendment, I ask you to consider the reasons behind this original intent involving absentee voting. It was designed to make sure that people had a chance to vote and to broaden the options available to them. Everyone would agree that absentee voting has been a success, and I would ask that you support in helping to make this good idea even better.

I also want to add that Senator Hammerstrom has a bill that would allow voting by absentee and that there were 19 co-sponsors on that legislation. So I ask that you folks support this amendment to this bill.

Senator Clark-Coleman’s first statement is as follows:

This substitute follows the requirement, as I said before, of the federal Help America Vote Act. It does not add anything extra, and it does not take anything away.

For example, the federal law allows a simple written affirmation that the voter is registered and eligible to vote. However, in the last election, voters whose records had been mixed up through no fault of their own instead had to fill out an owner’s affidavit under penalty of perjury. This affidavit requires the actual date that someone registered to vote, and I’m sure all of us know that we cannot remember the date that we registered to vote. I know in my few years being on this earth at the age that I registered to vote, I can’t remember those dates. We replace this affidavit with a simple written affirmation, which is all that is required under the federal Help America Vote Act, stating that the voter has registered more than 30 days before the election and that they had been registered more than 30 days, which is all that our law requires.

Then the election official has to verify that the identification of the voter and the provisional ballot is cast. Now there are six days for someone to come forward with written proof that the voter was not eligible to vote. Otherwise, the vote is counted. We then make it easier for voters to come forth and vote.

This view makes certain that the votes cast by the people who actually go to the polls are required to be counted into law. It would seem that we should treat voters as having the right to vote—our most sacred right in this democracy—and not force them to prove that they have a right to vote.

So I’m encouraging and asking my colleagues here to support this substitute.

Senator Clark-Coleman’s second statement is as follows:

We need to do everything we can to encourage our citizens to come out and vote. Voter apathy is something we’ve been dealing with for years.

Now the point was raised that this substitute violates HAVA in some way. We do know that other states are broadly interpreting the right of people to vote in the same manner that we put forth in this bill. The state of Nebraska has already passed a law allowing votes to be counted in the same manner that we put forth in this bill. There has been no hew and cry that it violates HAVA. In fact, the League of Women Voters website suggests that this is an appropriate way to handle this issue. I would certainly encourage you to consider voting for this substitute.

Senator Clark-Coleman’s third statement is as follows:

Remember that every provisional voter has to fill out a new voter registration that plainly states that the information is provided under penalty of perjury. This ensures that voter fraud would not occur. The majority’s attempt to add an additional sworn statement is unnecessary.

Furthermore, no one has shown that there is a problem with voter fraud in this state. There is no need to force additional burdens upon voters when there is a centralized voter registration system available to verify voter eligibility. I would encourage you to please adopt this substitute.

Senator Jacobs' first statement is as follows:

Again I rise in favor of the Clark-Coleman substitute because, as I mentioned before, it demonstrates our belief in voters. It demonstrates our belief as a chamber to treat people as if they have a right to be at the polls on Election Day.

I truly appreciate the hard work of the Majority Floor Leader in terms of what she's done on this issue. However, our substitute takes the broad view of HAVA and leaves it broad. My concern is that without the Clark-Coleman substitute that we are going to be setting up restrictions that we really don't want to have on voters. We want to make it easy for folks to vote. We want to treat voters the way they want to be treated, with respect and not suspicion. So I ask my colleagues to comply with HAVA by supporting the Clark-Coleman substitute which goes one step further and treats folks with dignity and respect.

Senator Jacobs' second statement is as follows:

I know that there has been some concern that this substitute might allow for election fraud. Well, nothing is further from the truth. The Secretary of State can simply check provisional ballots against the voter registration list, and if someone was not qualified to vote, the vote will be stricken. We simply trust the voter to have cast a valid vote, unless the election official can prove that the person was not qualified to vote.

Further, we know that sometimes, as much as we don't want to admit it, there is human error. Election officials make mistakes despite their best efforts. We should not be punishing the voters by making them prove in three different ways that they are entitled to vote.

Voting is truly our most sacred right in a democracy, and we, as a chamber, should protect that right in every possible way. I urge my colleagues to please vote for the Clark-Coleman substitute. It makes sense for us and our constituents.

Senator Brater's first statement is as follows:

I am here to urge you to adopt this amendment which would allow voters in Michigan to vote by mail. The whole idea, as was stated on the earlier amendment, of the Help America Vote Act is to help America vote, to make it easier for Michigan and other American citizens to vote. This amendment becomes all the more urgent in the defeat of the previous substitute. We have to remember that the reason the Help America Vote Act is before us. One of the reasons is because of the widespread disenfranchisement of voters in the last presidential election. People who came to try to vote in the state of Florida were turned away from the polls, who were registered to vote. It did affect the outcome of the presidential election, so it is a very serious matter that we are discussing here today. One way to circumvent harassment of the voters at the polls is not to force them to go to the polls, but to allow them to vote by mail the same way they can in Oregon where the system works very smoothly. This system will encourage people to participate. You won't have to worry about knowing if you have child care. Or if you are going to be out of the city or township, if you are going to be at work, or if you are going to be sick, you can vote in the comfort of your home, in advance or anytime it is convenient for you and mail in your ballot. I think this is a very good way to ensure that people in Michigan can exercise their right to vote, so I ask for your support of this amendment.

Senator Brater's second statement is as follows:

I fail to see how encouraging people to vote is irresponsible, but I do want to say for the record that I have introduced a bill to do just this, and I have not been given a hearing. I would hope that I would be given a hearing on this bill.

The following bill was read a third time:

Senate Bill No. 350, entitled

A bill to amend 1954 PA 116, entitled "Michigan election law," by amending sections 666 and 668 (MCL 168.666 and 168.668) and by adding section 668a.

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. 34

Yeas—38

Allen	Clark-Coleman	Jacobs	Sanborn
Barcia	Clarke	Jelinek	Schauer
Basham	Cropsey	Johnson	Scott
Bernero	Emerson	Kuipers	Sikkema
Birkholz	Garcia	Leland	Stamas
Bishop	George	McManus	Switalski
Brater	Gilbert	Olshove	Thomas

Brown
Cassis
Cherry

Goschka
Hammerstrom
Hardiman

Patterson
Prusi

Toy
Van Woerkom

Nays—0

Excused—0

Not Voting—0

In The Chair: Sanborn

The Senate agreed to the title of the bill.

By unanimous consent the Senate returned to the order of

Messages from the House

Senate Bill No. 57, entitled

A bill to amend 1994 PA 451, entitled “Natural resources and environmental protection act,” (MCL 324.101 to 324.90106) by adding section 11526c.

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

The House of Representatives has passed the bill as substituted (H-1), 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. 497, entitled

A bill to amend 1994 PA 451, entitled “Natural resources and environmental protection act,” by amending section 11502 (MCL 324.11502), as amended by 1996 PA 359.

The House of Representatives has amended the bill as follows:

1. Amend page 4, line 9, by striking out all of subdivision (a) and inserting:
“(a) House Bill No. 5234.”
2. Amend page 4, line 13, by striking out all of subdivision (e) and inserting:
“(e) House Bill No. 5235.”

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. 498, entitled

A bill to amend 1994 PA 451, entitled “Natural resources and environmental protection act,” by amending sections 11514 and 11521 (MCL 324.11514 and 324.11521).

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 1994 PA 451, entitled “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,” by amending section 11514 (MCL 324.11514); and to repeal acts and parts of acts.

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

Senate Bill No. 499, entitled

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending section 11526 (MCL 324.11526).

The House of Representatives has amended the bill as follows:

1. Amend page 2, line 16, after "**areas**" by inserting "**at the end original destination**".

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. 500, entitled

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 11546 and 11549 (MCL 324.11546 and 324.11549).

The House of Representatives has substituted (H-3) the bill.

The House of Representatives has passed the bill as substituted (H-3), ordered that it be given immediate effect and amended the title to read as follows:

A bill to amend 1994 PA 451, entitled "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," by amending section 11546 (MCL 324.11546).

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

Senate Bill No. 715, entitled

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 11533 and 11538 (MCL 324.11533 and 324.11538).

The House of Representatives has amended the bill as follows:

1. Amend page 1, line 8, after "**plan**" by striking out "**shall**" and inserting "**may**".

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.

By unanimous consent the Senate proceeded to the order of

Resolutions

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

Senate Resolution No. 175**Senate Resolution No. 139**

The motion prevailed.

Senators Clarke and Leland offered the following resolution:

Senate Resolution No. 213.

A resolution to express support for the Republic of China on Taiwan's participation in the World Health Organization.

Whereas, The preservation of good health is essential to all citizens of the world, and access to quality health programs is a necessity for this to occur; and

Whereas, The Republic of China on Taiwan was a founding member of the World Health Organization (WHO) and has continued to express a willingness to assist, financially and technically, international health programs supported by the WHO; and

Whereas, The Republic of China has a population larger than 75 percent of WHO members and is a vibrant democracy. It is an economic state that has continued to play an important role in the international arena, as seen through the collaboration of the United States Centers for Disease Control and Prevention and its Taiwanese counterpart; now, therefore, be it

Resolved by the Senate, That we express support for the Republic of China on Taiwan's meaningful and appropriate participation in the World Health Organization and the World Health Association; and be it further

Resolved, That copies of this resolution be transmitted to Thomas Cheng, Director General of the Taipei Economic and Cultural Offices in Chicago, and the World Health Organization.

Pending the order that, under rule 3.204, the resolution be referred to the Committee on Government Operations, Senator Hammerstrom moved that the rule be suspended.

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

The question being on the adoption of the resolution,

Senator Hammerstrom moved that the resolution be referred to the Committee on Health Policy.

The motion prevailed.

Senators Goschka and Switalski were named co-sponsors of the resolution.

By unanimous consent the Senate proceeded to the order of

Statements

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

The motion prevailed.

Senator Hardiman's statement is as follows:

Last Friday afternoon, on February 6, Governor Granholm vetoed important amendments to Michigan's parental notification law, specifically House Bill No. 4478. Her letter of explanation simply mischaracterizes House Bill No. 4478 as an existing law. As chairman of the Senate Standing Committee on Families and Human Services, I feel obligated to set the record straight on behalf of the committee and those who supported House Bill No. 4478.

Governor Granholm has not properly described the actual provisions or the intent of House Bill No. 4478. If what she had said about House Bill No. 4478 was true, I would not have wanted to be associated with it, nor would I have scheduled it for committee action.

The Governor says that she made a solemn promise to protect Michigan's families and that House Bill No. 4478 is not consistent with that vow for two reasons. She said that the bill is not about parental consent, but she provides no rationale for that assertion. No objective person could examine House Bill No. 4478 and conclude that it diminishes the involvement of parents in the lives of their children or undermines the present statute protecting that involvement apart from a judicial waiver. While the Governor states, "I support parental consent," she has chosen to veto a measure that would have strengthened it. House Bill No. 4478 makes it more likely that parents will be involved with the lives of their daughters in a very difficult situation and decisions involving serious medical issues, as well as the most fundamental moral and emotional issues. When should parents be involved if not at those times of crisis and grave decisions?

We know that there are families with problems and situations where parents should not be involved. Michigan law presently and with the changes in House Bill No. 4478 would allow judges to rule that the parents can be excluded from the decision to have an abortion in those instances.

The most serious charge by the Governor is that the bill would shield child abusers, including the worst kind of sexual predator—a parent or guardian who rapes his own child. This is an outrageous statement by its implication that legislators support the interests of twisted and evil sexual predators over the interest of a minor pregnant girl. Michigan Compiled Law 722.904(5), (6) and (7) presently require the courts in these situations to notify appropriate state and local law enforcement authorities of suspected sexual abuse. House Bill No. 4478 did nothing—I repeat, did nothing—to undercut this protection. Present law also allows the court to place a minor in protective custody if there is reason to suspect her health, safety, or welfare would be endangered by leaving her with her parent or guardian.

The Governor's review of House Bill No. 4478 should have alerted her that the specific standards for judges to use included consideration of neglect, hostility, or abuse by parents or guardians. House Bill No. 4478 would have required that each and every judge across our state base his or her decision for a waiver upon consideration of neglect, hostility, or abuse. With her veto pen, the Governor struck this specific requirement. We hope our judges will be sensitive to these issues, but House Bill No. 4478 would have required that as a matter of state law. That veto is unfortunate enough, but for the Governor to claim this action was necessary to protect girls from abuse flies in the face of a plain reading of the bill. It's one thing to oppose legislation on principle, but another to assign the worst motives to proponents while ignoring the actual language of the bill.

Finally, the Governor ends her plea to find common ground on reducing the demand for abortion, to prevent unwanted pregnancies, and remove barriers to adoption. That is a welcomed message, and the Legislature has been active on that front. However, at the end of the day, it is important to recognize that the dialogue on abortion, on parental consent, and on protecting children must rest on the foundation of trust, truthfulness, and fair play.

I am saddened by the veto.

By unanimous consent the Senate returned to the order of

Introduction and Referral of Bills

Senators Kuipers, Goschka, Garcia, Van Woerkom, Bishop, McManus, Cassis, George, Toy, Gilbert, Cropsey, Patterson, Birkholz, Hardiman, Jelinek, Sikkema, Hammerstrom, Allen, Stamas, Sanborn, Johnson and Brown introduced

Senate Joint Resolution H, entitled

A joint resolution proposing an amendment to the state constitution of 1963, by amending section 3 of article VIII, to provide for gubernatorial appointment of the superintendent of public instruction.

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

Senators Cropsey, Goschka, Kuipers, Garcia, Birkholz, Hardiman, Allen, McManus and Bishop introduced

Senate Bill No. 962, entitled

A bill to amend 1967 PA 281, entitled "Income tax act of 1967," (MCL 206.1 to 206.532) by adding section 269.

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

Senators Cassis, Patterson, Allen and Birkholz introduced

Senate Bill No. 968, entitled

A bill to create the pretrial services program act; to proscribe the duties of certain state and local agencies, officials, and employees; to establish certain criteria and procedures for releasing criminal defendants on bail and for revoking bail; to require certain reports; to provide for the confidentiality of certain information and reports; and to prohibit the use of certain information in making bail recommendations.

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

Senators McManus, Jelinek, Cropsey, Birkholz, Kuipers, Allen, Hardiman, Goschka, Garcia, Prusi, Stamas, Barcia and Cherry introduced

Senate Bill No. 969, entitled

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 503 and 1907 (MCL 324.503 and 324.1907), section 503 as amended by 1998 PA 419 and section 1907 as added by 1995 PA 60.

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

Senators Jelinek, Kuipers, Hammerstrom, Garcia, Barcia and Cropsey introduced

Senate Bill No. 970, entitled

A bill to amend 1996 PA 160, entitled "Postsecondary enrollment options act," by amending section 3 (MCL 388.513), as amended by 1997 PA 178.

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

Senators Jelinek, Kuipers, Hammerstrom, Garcia, Barcia and Cropsey introduced

Senate Bill No. 971, entitled

A bill to amend 2000 PA 258, entitled "Career and technical preparation act," by amending section 3 (MCL 388.1903).

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

Senators Patterson, Birkholz, Gilbert, Brown, Kuipers, McManus, Garcia, Cropsey, Goschka, Hardiman, Jelinek and Allen introduced

Senate Bill No. 972, entitled

A bill to provide standards for personnel policies to protect the right of conscience of health care providers who conscientiously object to providing or participating in certain health care services under certain circumstances; to provide for protection from certain liability; and to provide for penalties and remedies.

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

House Bill No. 4098, entitled

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," (MCL 324.101 to 324.90106) by adding section 11513a.

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

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

House Bill No. 4099, entitled

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 11505 and 11514 (MCL 324.11505 and 324.11514) and by adding sections 11507b and 11507c.

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

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

House Bill No. 4969, entitled

A bill to amend 1939 PA 280, entitled "The social welfare act," by amending section 57k (MCL 400.57k), as added by 1998 PA 361.

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 Families and Human Services.

House Bill No. 5238, entitled

A bill to amend 1986 PA 182, entitled "State police retirement act of 1986," (MCL 38.1601 to 38.1648) by adding section 41a.

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.

Committee Reports

The Committee on Agriculture, Forestry and Tourism reported

House Bill No. 5154, entitled

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 8303, 8304, 8306, and 8316 (MCL 324.8303, 324.8304, 324.8306, and 324.8316), sections 8303, 8304, and 8306 as amended by 2002 PA 418.

With the recommendation that the substitute (S-2) be adopted and that the bill then 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 Brater

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 Agriculture, Forestry and Tourism submitted the following:

Meeting held on Thursday, February 5, 2004, at 9:00 a.m., Room 110, Farnum Building

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

Excused: Senator Thomas

The Committee on Education reported

House Bill No. 4720, entitled

A bill to amend 1984 PA 431, entitled "The management and budget act," by amending section 263 (MCL 18.1263).

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, Cassis, Van Woerkom, Clark-Coleman and Leland

Nays: None

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

The Committee on Education reported

House Bill No. 4722, entitled

A bill to amend 1976 PA 451, entitled "The revised school code," by amending sections 623a and 1274 (MCL 380.623a and 380.1274), section 623a as amended by 1990 PA 159 and section 1274 as amended by 1994 PA 416.

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, February 5, 2004, at 2:00 p.m., Room 210, Farnum Building

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

COMMITTEE ATTENDANCE REPORT

The Committee on Technology and Energy submitted the following:

Meeting held on Wednesday, February 4, 2004, at 3:00 p.m., Room 210, Farnum Building

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

Excused: Senator Toy

Scheduled Meetings

Administrative Rules - Wednesday, February 11, 3:00 p.m., Room H-428, Capitol Building (373-6476)

Agriculture, Forestry and Tourism - Wednesday, February 11, 8:00 a.m., Rooms 402 and 403, Capitol Building (373-1635)

Appropriations - Wednesday, February 18, 1:00 p.m., Senate Appropriations Room, 3rd Floor, Capitol Building (373-2523)

Subcommittees -

Community Health Department - Thursdays, February 19, 2:00 p.m., Rooms 402 and 403, Capitol Building; February 26, March 4 and March 18, 2:00 p.m., Senate Hearing Room, Ground Floor, Boji Tower (373-7946)

Higher Education - Fridays, February 20, 10:00 a.m., Oakland University, Rochester; February 27, 10:00 a.m., University of Michigan-Flint, Flint; March 5, 10:00 a.m., Cornerstone University, Grand Rapids; and March 12, 9:00 a.m., Lake Superior State University, Sault Ste. Marie (373-1760)

Judiciary and Corrections - Tuesdays, February 17, February 24, March 2, March 9 and March 16, 3:00 p.m., Senate Hearing Room, Ground Floor, Boji Tower (373-3760)

Appropriations, Joint Senate/House - Thursday, February 12, 12:00 noon, House Appropriations Room, 3rd Floor, Capitol Building (373-2523)

Banking and Financial Institutions - Thursday, February 12, 12:00 noon, Room 100, Farnum Building (373-2417)

Education - Thursday, February 12, 2:00 p.m., Room 210, Farnum Building (373-6920)

Finance - Wednesday, February 11, 1:00 p.m., Room 110, Farnum Building (373-1758)

Health Policy - Wednesday, February 11, 1:00 p.m., Rooms 402 and 403, Capitol Building (373-3543)

Local, Urban and State Affairs - Thursday, February 12, 1:00 p.m., Room 110, Farnum Building (373-1707)

Technology and Energy - Wednesday, February 11, 3:00 p.m., Room 210, Farnum Building (373-7350)

Senator Hammerstrom moved that the Senate adjourn.
The motion prevailed, the time being 12:53 p.m.

The Assistant President pro tempore, Senator Sanborn, declared the Senate adjourned until Wednesday, February 11, 2004, at 10:00 a.m.

CAROL MOREY VIVENTI
Secretary of the Senate