

No. 32

JOURNAL OF THE SENATE

Senate Chamber, Lansing, Wednesday, April 23, 1997.

10:00 a.m.

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

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

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

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

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

Pastor Russell Carlson of Forest Park Covenant Church in Norton Shores offered the following invocation:

O God, we thank You for the opportunity we have to serve one another. We thank these women and men who have been elected to serve their people here in Michigan. We thank You for the opportunities we have in many ways to bring help to one another.

We thank You for the many who have donated organs that others might have the gift of life. We thank You for the opportunities that I have had in the last 10 years to serve others because that gift of life was given to me.

We pray for wisdom for these women and men as they deliberate today and for Your guidance upon them. I ask this in Jesus' name. Amen.

Motions and Communications

Senator A. Smith entered the Senate Chamber.

Senator DeGrow moved that Senators Dunaskiss, Hoffman and Schuette be temporarily excused from today's session.

The motion prevailed.

Senators Hoffman, V. Smith and Dunaskiss entered the Senate Chamber.

Senator DeGrow moved that rule 3.902 be suspended to allow the guests of Senators Stille, Schwarz and Steil admittance to the Senate floor.

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

Senator DeGrow moved that rule 3.901 be suspended to allow photographers to film on the Senate floor from the center aisle.

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

Senator Berryman moved that Senator Young be temporarily excused from today's session.

The motion prevailed.

Recess

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

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

10:24 a.m.

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

During the recess, Senator Schwarz and Lieutenant Governor Binsfeld made statements regarding organ donation and the "Gift of Life" organization.

During the recess, Senator Steil made special presentations to the Grand Rapids Ottawa Hills High School Boys Basketball Team, the 1996-97 Class A State Champions, and their coach, Jim Eaddy.

The Secretary announced that the following House bills were received in the Senate and filed on Tuesday, April 22:

House Bill Nos. 4052 4443 4478

The Secretary announced the printing and placement in the members' files on Tuesday, April 22 of:

House Bill Nos. 4637 4638 4639 4640 4641 4642 4643 4644 4645 4646 4647

Messages from the Governor

The following communication from the Governor was received on April 17, 1997, and read:

EXECUTIVE ORDER
1997 - 7

**Department of Military Affairs
Department of Military and Veterans Affairs**

Executive Reorganization

Whereas, Article V, Section 1, of the Constitution of the State of Michigan of 1963 vests the executive power in the Governor; and

Whereas, Article V, Section 2, of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

Whereas, the Michigan Department of Military Affairs was created by Act No. 380 of the Public Acts of 1965, as amended, being Section 16.225 et seq. of the Michigan Compiled Laws; and

Whereas, the Department of Military Affairs, in addition to its traditional mission of administering the Michigan National Guard, is responsible for all state programs supporting veterans' services; and

Whereas, the Director of the Department of Military Affairs administers the Grand Rapids Home for Veterans, the D.J. Jacobetti Home for Veterans Trust Fund and grants to veterans service organizations from the State of Michigan; and

Whereas, it is important to recognize that the Department of Military Affairs has dual missions of being prepared for active service and supporting and maintaining veterans services.

Now, Therefore, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by the Constitution of the State of Michigan of 1963 and the laws of the State of Michigan, and in recognition of the Department's dual missions of readiness and veterans' services, do hereby order the following:

The Department of Military Affairs is hereby renamed the Department of Military and Veterans Affairs.

In fulfillment of the requirement of Article V, Section 2, of the Constitution of the State of Michigan of 1963, the provisions of this Executive Order shall become effective 60 days after filing.

[SEAL]

Given under my hand and the Great Seal of the State of Michigan this 17th day of April, in the Year of our Lord, One Thousand Nine Hundred Ninety-seven.

John Engler
Governor

By the Governor:
Candice S. Miller
Secretary of State

The Executive Order was referred to the Committee on Government Operations.

The following messages from the Governor were received and read:

April 16, 1997

There is herewith presented for consideration and confirmation by the Senate, the following appointment to office:

Michigan Board of Medicine

Ms. Nancy Hillegonds, 47088 Brooks Lane, Plymouth, Michigan 48170, county of Wayne, as a member representing the general public, succeeding Mrs. Teresa L. Olson of Brighton, who has resigned, for a term expiring on December 31, 1997.

April 16, 1997

There are herewith presented for consideration and confirmation by the Senate, the following reappointments to office:

Michigan Corn Marketing Committee

Mr. Steven John Gazdag, 6369 East MN Avenue, Kalamazoo, Michigan 49001, county of Kalamazoo, as a member representing growers from District 2, succeeding himself, for a term expiring on March 5, 1999.

Ms. Norma Jean Lewis, 5575 W. Chicago, Jonesville, Michigan 49250, county of Hillsdale, as a member representing growers from District 3, succeeding herself, for a term expiring on March 5, 1999.

Mr. Gary Vern Krug, 2585 Bad Axe Road, Bad Axe, Michigan 48413, county of Huron, as a member representing growers from District 8, succeeding himself, for a term expiring on March 5, 1999.

April 21, 1997

There are herewith presented for consideration and confirmation by the Senate, the following appointments and reappointments to office:

Board of Professional Engineers

Mr. Martin L. Straub, 13131 Island Lake Road, Chelsea, Michigan 48118, county of Washtenaw, as a member representing professionals, succeeding himself, for a term expiring on March 31, 2001.

Mr. Ronald V. Quackenbush, 213 Sage Lake Road, Rose City, Michigan 48654, county of Ogemaw, as a member representing the general public, succeeding himself, for a term expiring on March 31, 2001.

Mr. James W. Bauer, 468 E. Hamilton Lane, Battle Creek, Michigan 49015, county of Calhoun, as a member representing the Board of Architects, succeeding Mr. Daniel A. Redstone of West Bloomfield, whose term has expired, for a term expiring on March 31, 2001.

Mr. David E. Mester, 117 Park Hills Drive, SE, Grand Rapids, Michigan 49506, county of Kent, as a member representing professionals, succeeding Dr. Molly Wells Williams of Kalamazoo, whose term has expired, for a term expiring on March 31, 2001.

April 21, 1997

There are herewith presented for consideration and confirmation by the Senate, the following reappointments to office:

Commission on Disability Concerns

Mrs. Barbara J. Ambrogio, 22761 Worthington, St. Clair Shores, Michigan 48081, county of Macomb, as a member representing the general public, succeeding herself, for a term expiring on March 5, 2000.

Dr. David A. Stewart, 215 North Every, Mason, Michigan 48854, county of Ingham, as a member representing the general public, succeeding himself, for a term expiring on March 5, 2000.

Ms. Luz Maria Cebreco, 3035 Newport, Detroit, Michigan 48215, county of Wayne, as a member representing the general public, succeeding herself, for a term expiring on March 5, 2000.

Mr. Joseph M. Connelly, 32148 Camborne Lane, Livonia, Michigan 48154, county of Wayne, as a member representing the general public, succeeding himself, for a term expiring on March 5, 2000.

Sincerely,
John Engler
Governor

The appointments were referred to the Committee on Government Operations.

Third Reading of Bills

Senators Young and Schuette entered the Senate Chamber.

The following bill was read a third time:

Senate Bill No. 306, entitled

A bill to amend 1964 PA 170, entitled "An act to make uniform the liability of municipal corporations, political subdivisions, and the state, its agencies and departments, officers, employees, and volunteers thereof, and members of certain boards, councils, and task forces when engaged in the exercise or discharge of a governmental function, for injuries to property and persons; to define and limit this liability; to define and limit the liability of the state when engaged in a proprietary function; to authorize the purchase of liability insurance to protect against loss arising out of this liability; to provide for defending certain claims made against public officers and paying damages sought or awarded against them; to provide for the legal defense of public officers and employees; to provide for reimbursement of public officers and employees for certain legal expenses; and to repeal certain acts and parts of acts," by amending the title and sections 1, 2, 4, and 6 (MCL 691.1401, 691.1402, 691.1404, and 691.1406), the title and section 1 as amended by 1986 PA 175 and section 2 as amended by 1996 PA 150, and by adding sections 2a and 2b.

The question being on the passage of the bill,
 Senator Peters offered the following amendment:

1. Amend page 12, following line 4, by inserting:

“Sec. 3. EXCEPT AS PROVIDED IN SECTION 3A, ~~No~~ A governmental agency is NOT liable for injuries or damages caused by A defective ~~highways~~ HIGHWAY unless the governmental agency knew, or in the exercise of reasonable diligence should have known, of the existence of the defect and had a reasonable time to repair the defect before the injury took place. Knowledge of the defect and time to repair the ~~same shall be~~ DEFECT IS conclusively presumed ~~when~~ IF the defect existed so as to be readily apparent to an ordinarily observant person for a period of 30 OR MORE days ~~or longer~~ before the injury took place.

SEC. 3A. A GOVERNMENTAL AGENCY IS LIABLE FOR DAMAGES TO A MOTOR VEHICLE CAUSED BY A POTHOLE IN A HIGHWAY IF THE GOVERNMENTAL AGENCY KNEW, OR IN THE EXERCISE OF REASONABLE DILIGENCE SHOULD HAVE KNOWN, OF THE EXISTENCE OF THE POTHOLE AND HAD A REASONABLE TIME TO REPAIR THE POTHOLE BEFORE THE DAMAGE TO THE MOTOR VEHICLE TOOK PLACE. KNOWLEDGE OF THE POTHOLE AND TIME TO REPAIR THE POTHOLE IS CONCLUSIVELY PRESUMED IF THE POTHOLE EXISTED SO AS TO BE READILY APPARENT TO AN ORDINARILY OBSERVANT PERSON FOR A PERIOD OF 14 DAYS BEFORE THE DAMAGE TOOK PLACE. THIS SECTION IS REPEALED 3 YEARS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION.”.

The question being on the adoption of the amendment,
 Senator V. Smith 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. 130

Yeas—15

Berryman	DeBeaussaert	Miller	Smith, V.
Byrum	Dingell	O’Brien	Vaughn
Cherry	Hart	Peters	Young
Conroy	Koivisto	Smith, A.	

Nays—22

Bennett	Dunaskiss	McManus	Schwarz
Bouchard	Emmons	North	Shugars
Bullard	Gast	Posthumus	Steil
Carl	Geake	Rogers	Stille
Cisky	Gougeon	Schuette	Van Regenmorter
DeGrow	Hoffman		

Excused—0

Not Voting—1

Stallings

In The Chair: President

Senator Dingell offered the following amendment:

1. Amend page 7, following line 27, following subsection (11), by inserting:

“(12) CONFORMANCE TO GENERALLY ACCEPTED ENGINEERING STANDARDS SHALL NOT BE A DEFENSE IF A PATTERN OF INCIDENTS IN A PARTICULAR LOCATION INDICATES THAT SUCH STANDARDS ARE INADEQUATE TO PROTECT THE PUBLIC.” and renumbering the remaining subsection.

The question being on the adoption of the amendment,

Senator Dingell requested the yeas and nays.

The yeas and nays were not ordered, 1/5 of the members present not voting therefor.

Senator V. Smith 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. 131**Yeas—17**

Berryman	DeBeaussaert	Miller	Smith, V.
Byrum	Dingell	O'Brien	Stallings
Cherry	Hart	Peters	Vaughn
Cisky	Koivisto	Smith, A.	Young
Conroy			

Nays—21

Bennett	Emmons	McManus	Schwarz
Bouchard	Gast	North	Shugars
Bullard	Geake	Posthumus	Steil
Carl	Gougeon	Rogers	Stille
DeGrow	Hoffman	Schuette	Van Regenmorter
Dunaskiss			

Excused—0**Not Voting—0**

In The Chair: President

Senator Dingell offered the following amendment:

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

“(B) “GENERALLY ACCEPTED ENGINEERING STANDARDS” MEANS STANDARDS THAT CONFORM TO WARRANTS ESTABLISHED BY FEDERAL OR MICHIGAN ORGANIZATIONS RESPONSIBLE FOR REVIEW OF ROADWAY SAFETY.” and relettering the remaining subdivisions.

The question being on the adoption of the amendment,

Senator Dingell 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. 132**Yeas—18**

Berryman	DeBeaussaert	Miller	Smith, V.
Byrum	Dingell	O'Brien	Stallings
Cherry	Dunaskiss	Peters	Vaughn
Cisky	Hart	Smith, A.	Young
Conroy	Koivisto		

Nays—20

Bennett	Emmons	McManus	Schwarz
Bouchard	Gast	North	Shugars
Bullard	Geake	Posthumus	Steil
Carl	Gougeon	Rogers	Stille
DeGrow	Hoffman	Schuette	Van Regenmorter

Excused—0**Not Voting—0**

In The Chair: President

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. 133**Yeas—22**

Bennett	Dunaskiss	McManus	Schwarz
Bouchard	Emmons	North	Shugars
Bullard	Gast	Posthumus	Steil
Carl	Geake	Rogers	Stille
Cisky	Gougeon	Schuette	Van Regenmorter
DeGrow	Hoffman		

Nays—16

Berryman	DeBeaussaert	Miller	Smith, V.
Byrum	Dingell	O'Brien	Stallings
Cherry	Hart	Peters	Vaughn
Conroy	Koivisto	Smith, A.	Young

Excused—0**Not Voting—0**

In The Chair: President

The Senate agreed to the title of the bill.

Protests

Senators V. Smith, Peters, A. Smith, Cherry and Dingell, under their constitutional right of protest (Art. IV, Sec. 18), protested against the passage of Senate Bill No. 306 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 V. Smith's first statement is as follows:

I rise to oppose Senate Bill No. 306. I know all of the members have the bill analysis for this particular bill, but I would just like to read the purpose. This bill reduces the scope and extent of governmental liability for negligent highway repair and maintenance and provides affirmative defenses for governmental entities which are negligent in repairing or maintaining highways. The question is, what we want to do at the present time? All of us know what's going on with our roads. We have all seen the studies which show that Michigan's roads are deteriorating. We've all seen the studies that show that our roads and bridges are in serious trouble. We've all seen the studies which show that it would take \$17 billion plus to bring our highways back to the standard they've been in the past in Michigan. So the question is, if we are aware of the deteriorating effect of the present Michigan road system, then why would we want to put out a bill which limits the people that have to drive those roads to a higher standard, and in effect, reduces both the scope and extent of their ability to recover, even if negligence is shown in the design or in the placement of road signs and the way the road was put into place? It seems to me that you are going the wrong way. If indeed our constituents are having to drive over worse roads, why would we want to make it harder for them if an accident is caused as a result of negligence by the state. Why would we want to exclude them if there is serious harm or injury?

There are a number of things in this legislation that I think we need to be aware of. There are a number of different standards; the reduction in scope. The scope of a liability is reduced in this particular bill, by changing the standard from a negligent one, to one of a gross negligent standard. That is one of the big changes in this bill, and as you heard the debate on this floor, gross negligence requires a willful or an intentional act. It is a standard that is almost impossible to meet and a standard which excludes general negligence. Why would we want to exclude liability for ourselves for the state, if indeed we are negligent and that negligence causes a serious injury?

The second change in reducing the liability of the state is one of extent. In terms of the extent of the liability, we changed the standard whereby on economic damages, we place a dollar limit of \$300,000, and if you don't have any insurance and you are out there, driving there would be no recovery for non-economic damages. So indeed there is a problem in this state. There is a severe problem in this state because of no-fault auto insurance with drivers not having insurance and still being on the road. But, the way this legislation handles it, instead of punishing the person who is out there driving without insurance, we punish the victim. We punish the person they run into and conclude that because you were hit by an uninsured driver, you are not eligible for damages that are non-economic. Most of the members on this floor know what non-economic damages are. Economic damages are the damages you can show you personally suffered from an automobile injury. Loss of wages and damages to you car. It goes to the extent of injury you have, but it does not go to any punitive type damages from the negligent act itself. What if the damages are over and above \$300,000? If you happen to be hit by a driver who does have insurance, there is included a limitation there, and that limitation is one of \$280,000 for bodily injury, and \$500,000 for the loss of usage of a vital bodily function.

In many examples in this state, and in many of the presentations that were made in front of the Judiciary Committee, we saw extensive injuries to victims which were over and above the amount of damages that are contained in this bill. So we reduce the extent of liability on the victim, not on the perpetrator. The perpetrator is not dealt with, but the victim is dealt with by limiting their ability to recover from serious automobile injury or disfigurement from an automobile accident in this state. What about the prior reductions in auto liability insurance reform, the medical malpractice reform and tort liability reform? One of the things we did in the prior auto insurance reform, is we changed the basis in which liability can be given to parties. If you are a majority at fault, then you cannot recover. We changed the principle where any percentage of fault you would be responsible for. Now you have to be a majority at fault and for the state, that reduces even further, the ability to sue the state unless the state is more than 50% negligent in causing the particular injury. So we add even more burdens to the victim by having changed the scope, having changed the extent and also having changed the nature of liability in terms of the percentage of loss and the percentage of involvement in causing a particular road-way accident.

There is another obscure provision that is in this legislation which requires that if you do not file your law suit, there is an absolute bar. The prior statute gave a 120 day notification period, but the courts in interpreting the 120 day period, did it in a fashion that would not bar a legitimate claim because of the 120 day notification, and in many times they waived it. This legislation changes that. It says that a court no longer has that discretion. It requires that if the law suit is not filed within 120 days, it is an absolute bar to recovery. So this bill has one thing after another, after another, which reduces the state's liability and it does it at a time when all of the other reform changes we have made in tort law, have not shown that they have had what the other side has claimed would be the result of it, and that is a reduction in liability for the people who would have caused fault in that particular accident. I think this is a bad way to go and I think this does not take into consideration the people we represent. I would think that if we were about representing our constituents, we would not be here today trying to limit their ability in being able to go to court and be fairly compensated for injury that occurs to them on a negligent act on a highway within the state of Michigan.

This bill is not the right way to go, it is the wrong way to go. I would ask the body to turn down Senate Bill No. 306.

Senator V. Smith's second statement is as follows:

I listened intently to the both of my distinguished colleagues on the other side of the aisle, but I would like to remind them what this bill, indeed, does is change the standard. It changes the scope, it puts up an absolute bar if you fail to file within that 120 day period, and it places a standard of gross negligence, which is almost never reached. If there are 31 states that have an absolute ban, then what you should have done is put the absolute ban out, rather than placing a standard which is unobtainable by the average person in terms of being able to show that the state willfully and intentionally intended to create a negligent situation that led to serious injury. I think that is a factual situation and a legal standard that is not going to be obtainable. Therefore, indeed, what you are trying to do is exclude any liability on behalf of the state.

Now, maybe there are 31 other states that ban all liability. I don't think that is the way to go. I think it is not proper if we are going to have the responsibility to build and maintain highways, to say that our actions cannot have been negligent and could have caused some injury.

Now, supposedly this bill was put forth to deal with a court decision, as we see many particular pieces of legislation, but I don't think it was any definitive ruling in that court decision which dramatically expanded the scope of what would be liable by the state. So, we have taken severe actions, even though the dollar amounts that the state has had to expend continues to drop and has fallen below \$9 million this year. Citizens should be able to recover for negligent acts when injury results. Vote "no" on Senate Bill No. 306.

Senator Peters' statement, in which Senator A. Smith concurred, is as follows:

I just wanted to follow up my colleague, Senator Virgil Smith, in opposing this bill and urge my colleagues to oppose the bill as well. We have heard some of the rhetoric from the other side of the aisle that this bill deals with frivolous lawsuits. In reality it does not deal with frivolous lawsuits. We have already dealt with frivolous lawsuits on numerous occasions on other bills that have passed. This bill really deals with legitimate injuries suffered by people traveling our roadways.

I am going to quote a couple of individuals who talk about frivolous lawsuits and the wonderful job we have done in this state eliminating frivolous lawsuits and why this bill really does not really deal with that. The first one comes from Gongwer, December 16, 1996, and I quote, "Significant tort reforms were enacted, making it more difficult to collect on lawsuits. We put the ambulance chasers on their heels," said Jeff McAlvey Governor John Engler's legislative liaison. People with legitimate injuries are able to be compensated, but he says, "We put an end to frivolous lawsuits." This bill is not about frivolous lawsuits. Bills have already been dealt with. This actually goes to people who have suffered from legitimate injuries. Then I go on to quote Michigan Lawyers Weekly, in a story that appeared March 3, 1997, and I quote from this journal, "Highway cases resulting in total pay-out of \$9.5 million last year. This was the lowest amount in 10 years," said Bill Bowerman a Chief Analyst at the Senate Fiscal Agency. Following up this quote, showing that we are seeing suits go down, I quote the Chief Assistant Attorney General who goes on in his article and says, "The suits we are settling are not frivolous. The state is a large organization and sometimes it is wrong," said Stanley Steinburn, Chief Assistant Attorney General. "When the state is wrong, and hurts somebody, we have to pay."

This bill is not dealing with frivolous lawsuits. These are legitimate claims that people are suffering. I think passage of this bill certainly sends the wrong message when the people of the state of Michigan are saying that we, as a state government, are walking away from our responsibility of maintaining our state highway infrastructure. We are not putting in the resources necessary to maintain a world-class highway system, and in fact, it's crumbling around us. But at the same time the state is walking away from its responsibility to maintain a highway system. By passage of this bill we'd also be walking away from our responsibility to compensate those individuals who are legitimately hurt traveling state highways. This is the wrong time to be passing this bill. What this legislature needs to be doing is stepping up to the plate, increase funding for roads, put our roads back into world-class situation, and not walk away from our responsibility of helping those who are harmed on our roads. I would urge a "no" vote on this bill.

Senator Cherry's statement is as follows:

I rise to urge a "no" vote on Senate Bill No. 306. As I heard and followed the discussion and debate on this bill, it appears that it's being put forward, that it's important to pass this legislation because it will provide cost savings that then can be used to fund road construction. We ought to do all that we can to find extra money before we contemplate raising any taxes to fund road construction. And, I agree that we ought to make every effort to locate dollars that might be able to be used to maintain Michigan roads. Unfortunately, I think, as Senator Dingell so aptly detailed, there simply isn't any cost savings in this bill. So, that reason doesn't seem to be one that really has any bearing.

The other issue that gives me a great deal of concern is when you look at the state of Michigan roads and the problems that people are having in terms of damage to their cars and I've had a number of constituents who have incurred costly repair bills because of pot holes they've hit. By passing this bill under these circumstances, we are sending the absolutely wrong incorrect message. When roads are at their worst, the people can suffer severe damage. We are simply going to take away from them their major avenue for financial recourse.

I think that's wrong and on that basis it is my intention to vote "no."

Senator Dingell's first statement, in which Senator Cherry concurred, are as follows:

What the amendment does is that it requires persons relying on engineering standards to use their eyes and their head, not just use blind faith. Now, as a Catholic I'm allowed to use blind faith when looking at this standards-setting book, it's called the Bible. Quite appropriately, it was printed in Grand Rapids.

However, engineering standards are not supposed to be used that way. Part of the reason why is because engineering standards are frequently set by persons who were thinly disguised salesmen who have a pecuniary interests in making sure that their product meet the standard. Frequently, the standard setting organizations merely adopt what's being sold out there without a great deal of inquiry more than that. Being a metallurgical engineer and having been an actual design professional you ran into lots of cases of this in the mill, welding rods, for example. It was strange. In engineering school I noticed that as far as the engineering standards for welding rods were concerned the standards were drawn around the products of the people who made welding rods, not vice versa. This is a pervasive practice in the engineering community. I don't believe that people who design highways should be allowed to put on blinders and simply ignore situations where the engineering standards available are simply not up to the task of protecting the public when their not. When it's clearly evident to engineering design professionals, then they ought to be required to do what any engineering professional should do—deviate from the standard—to do it otherwise would be negligent. When the state's engineering professionals don't deviate, then we're doing wrong. We should be compensating those persons we do wrong to. We should compensate them for the harm we do to them. That's the importance of this recommendation. I recommend it to my colleagues.

Senator Dingell's second statement, in which Senator Cherry concurred, is as follows:

The way the language is in the bill currently, there is no specification on what kind of organizations that are going to be writing the standards that are going to be blindly adhered to. I could easily see organizations such as fastener manufacturers, guard rail manufacturers and concrete manufacturers setting standards on guard rail installation. You have to understand how standard setting organizations work. They set their standards frequently around the products they want to sell. Frankly, I am not interested in furthering the business of guard rail manufacturers, fastener manufacturers or concrete manufacturers. I am interested in furthering public safety. If you want to encourage blind adherence, then hopefully, you would be having organizations that are concerned with highway safety, set those standards, not those pecuniary interest. This amendment limits the kind of standards that may be blindly adhered to those set by highway safety organizations. I really don't like the idea of blind adherence to any standards. I don't think it is good engineering to do so. If we are going to, let's eliminate those with a pecuniary interest.

Senator Dingell's third statement, in which Senator Cherry concurred, is as follows:

This amendment is a narrowing amendment, this amendment is not a broadening amendment. It narrows the type of standard setting organization that may be considered to only one type; that which is concerned with highway safety. Those that are instead concerned with such things as making guard rails, fasteners, concrete or other construction materials or that have other agendas, may not be considered. I don't see how anybody could see this amendment as broadening anything. I recommend the amendment to my colleagues.

Senator Dingell's fourth statement, in which Senator Cherry concurred, is as follows:

I rise in opposition to the bill as amended. During both Judiciary Committee's consideration of the bill and the full Senate's consideration of the bill, I've asked a lot of questions and done a lot of thinking. One of the key definitions in the bill is that the MDOT will be liable only for the improved portion of the highway, which is designed for vehicular travel, which is defined as the physical structure of the traveled portion of the road bed actually designed for public vehicular travel. Essentially, I've asked the following three questions about that: Does the definition envision that the state will be liable for improperly designed elevations, slopes and grades? The answer has been "yes." Does the definition envision that the state would be liable for the unnatural accumulations of water or snow on the highway? The answer is "yes." Finally, does the definition envision that the state would be liable for failing to design an intersection in such a manner as to allow adequate sight distance for safe travel? The answer is "yes."

If the answers to these questions are "yes," then the fiscal impact of Senate Bill No. 306 would be to save approximately a half million dollars per year based on the descriptions of conditions leading to liability contained in the status of lawsuits against the state of Michigan, fiscal year 95-96 update. That was issued by the Senate Fiscal Agency. The numbers you're hearing from the supporters of the bill are on the order of \$10 million. Hell, that's all we pay out!

In past years the numbers have been higher. But you know what? The last three years the numbers have been about \$10 million. You know what? MDOT has been simply settling, virtually all of those cases.

In addition, I'm alarmed about the bill because what it does is it encourages—no, it demands—that MDOT will exercise blind adherence to any generally accepted engineering standard regardless of what organization promulgated that standard, even if MDOT's experience demonstrates the inadequacy of that engineering standard. Standards are frequently set based on assumptions that are not clearly evident in the standard or on pecuniary interest by the

organization that's setting the standard. There's a word in the engineering professions for blind adherence to any engineer standard, and that's malpractice. Therefore, I encourage my colleagues to vote "no" on the bill.

The following bill was read a third time:

Senate Bill No. 340, entitled

A bill to amend 1995 PA 29, entitled "Uniform unclaimed property act," by amending sections 11, 18, 19, 20, 23, 25, and 31 (MCL 567.231, 567.238, 567.239, 567.240, 567.243, 567.245, and 567.251); and to repeal acts and parts of acts.

The question being on the passage of the bill,

Senator Peters offered the following amendment:

1. Amend page 9, following line 26, by inserting:

"Sec. 24. (1) Except as otherwise provided by this section, the administrator shall promptly deposit ~~in the general fund of this state~~ all funds received under this act, including the proceeds from the sale of abandoned property under section 23, INTO THE MICHIGAN TRANSPORTATION FUND ESTABLISHED UNDER SECTION 10 OF 1951 PA 51, MCL 247.660. The administrator shall retain in a separate trust fund an amount not less than \$100,000.00 from which prompt payment of claims allowed under this act shall be made. When making the deposit, the administrator shall record the name and last known address of each person appearing from the holders' reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or contract listed in the report of an insurance company, the number of the policy or contract, the name of the insurance company, and the amount due. The name of the owner or apparent owner and a gross description of the property only shall be available for public inspection at all reasonable business hours.

(2) Before making any deposit to the credit of the ~~general~~ MICHIGAN TRANSPORTATION fund ESTABLISHED UNDER SECTION 10 OF 1951 PA 51, MCL 247.660, the administrator may deduct any of the following:

- (a) Costs in connection with the sale of abandoned property.
- (b) Costs of mailing and publication in connection with any abandoned property.
- (c) Reasonable service charges.
- (d) Costs incurred in examining records of holders of property and in collecting the property from those holders.

(3) The administrator shall transfer to the senior care respite fund created in the older Michiganians act, ~~Act No. 180 of the Public Acts of 1981, being sections 400.581 to 400.594 of the Michigan Compiled Laws 1981 PA 180, MCL 400.581 TO 400.594,~~ funds that escheat to this state pursuant to section 403a of the nonprofit health care corporation reform act, ~~Act No. 350 of the Public Acts of 1980, being section 550.1403a of the Michigan Compiled Laws 1980 PA 350, MCL 550.1403A."~~

The question being on the adoption of the amendment,

Senator V. Smith 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. 134

Yeas—17

Berryman	Dingell	Miller	Smith, V.
Byrum	Hart	O'Brien	Stallings
Cherry	Hoffman	Peters	Vaughn
Conroy	Koivisto	Smith, A.	Young
DeBeaussaert			

Nays—21

Bennett	Dunaskiss	McManus	Schwarz
Bouchard	Emmons	North	Shugars
Bullard	Gast	Posthumus	Steil
Carl	Geake	Rogers	Stille
Cisky	Gougeon	Schuette	Van Regenmorter
DeGrow			

Excused—0

Not Voting—0

In The Chair: President

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. 135**Yeas—38**

Bennett	DeGrow	McManus	Shugars
Berryman	Dingell	Miller	Smith, A.
Bouchard	Dunaskiss	North	Smith, V.
Bullard	Emmons	O'Brien	Stallings
Byrum	Gast	Peters	Steil
Carl	Geake	Posthumus	Stille
Cherry	Gougeon	Rogers	Van Regenmorter
Cisky	Hart	Schuette	Vaughn
Conroy	Hoffman	Schwarz	Young
DeBeaussaert	Koivisto		

Nays—0**Excused—0****Not Voting—0**

In The Chair: President

The Senate agreed to the title of the bill.

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

The motion prevailed.

Senator Bullard's statement is as follows:

It is my honor today to present a legislative tribute to Cindy Essenmacher, an intern in our office, who is the 1997 Daniel Rosenthal Legislative Intern of the Year. Many of you may recognize Cindy as a Page in the Senate for one year. She then joined my office. Until I read her application for this award, I was not aware of everything she did. Literally, she ran my whole office and made all the decisions. So, we are very happy to recognize Cindy today. There will be a ceremony on the 4th Floor, Rooms 402 and 403 of the Capitol, at noon. Lynn Jondahl, former State Representative and the head of the Michigan Political Leadership Program, will speak. Cindy is graduating from Michigan State in about 10 days and I would hope that the Senate would congratulate Cindy on this award and wish her luck in her future life. I'll present this award to Cindy.

General Orders

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

The motion prevailed, and the President, Lieutenant Governor Binsfeld, designated Senator A. Smith as Chairperson.

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

Senate Bill No. 128, entitled

A bill to amend 1978 PA 368, entitled "Public health code," by amending section 2882 (MCL 333.2882), as amended by 1996 PA 307.

Senate Bill No. 305, entitled

A bill to amend 1931 PA 328, entitled "The Michigan penal code," (MCL 750.1 to 750.568) by adding section 160a.

Senate Bill No. 322, entitled

A bill to designate the first Monday following February 4 as Mrs. Rosa L. Parks day in the state of Michigan. The bills were placed on the order of Third Reading of Bills.

By unanimous consent the Senate proceeded to the order of

Resolutions

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

Senate Resolution No. 20**Senate Concurrent Resolution No. 11****Senate Concurrent Resolution No. 18****Senate Concurrent Resolution No. 19****Senate Concurrent Resolution No. 20****Senate Concurrent Resolution No. 21****Senate Concurrent Resolution No. 22**

The motion prevailed.

The question was placed on the adoption of the following resolution consent calendar:

Senate Resolution No. 48

The resolution consent calendar was adopted.

Senators Cherry and Byrum offered the following resolution:

Senate Resolution No. 48.

A resolution to commemorate Continental Cablevision's "Tune in to Kids and Family Month" April 1997.

Whereas, Continental Cablevision honors parents as an influential source in learning societal and cultural values, which play a determinant role in the development of youth; and

Whereas, Cable television networks offer more than 80 percent of all television hours devoted to children and more than 65 percent of all programs available to children; and

Whereas, Continental Cablevision's "Tune in to Kids and Family Month" coincides with the National Cable Telecommunications Association's "Tune in to Kids and Family Week" April 7-13, during which parents and children have the opportunity to view some of cable's finest educational programming all during prime viewing hours; and

Whereas, Many of these programs are currently used by Michigan teachers to enhance classroom discussion through Cable in the classroom, a free service of Continental Cablevision which provides more than 540 hours of commercial-free educational programming to schools each month; and

Whereas, Continental Cablevision believes children and parents can become better television viewers by sharing viewing tips—practical suggestions on how to watch television and make TV fun and educational for your family; and

Whereas, These tips include taping children's favorite shows during the day while they play in the sun and watching them together after dinner, and scanning weekly listings for movies and making a trip to the library to research books on the subject; and

Whereas, During "Tune in to Kids and Family Month" Continental Cablevision has joined with the Michigan PTA to distribute videotapes of "Taking Charge of Your TV" featuring Rosie O'Donnell, to all PTAs and PTOs in Michigan that lie within Continental's viewing areas; and

Whereas, Continental Cablevision and the Michigan PTA urge all PTAs and PTOs to share this tape at their next meeting, thereby enabling families to learn how to "take charge" of TV in their homes; now, therefore, be it

Resolved by the Senate, That we do hereby proclaim the Month of April 1997, as Continental Cablevision's "Tune in to Kids and Family Month" in Michigan, and urge all families and communities to join together to recognize the importance of educational programming on cable television and the invaluable role of parents in shaping our society; and be it further

Resolved, That a copy of this resolution be transmitted to Continental Cablevision as evidence of our respect and best wishes.

Senators Stallings, Young, McManus and Bouchard were named co-sponsors of the resolution.

By unanimous consent the Senate returned to the order of

Introduction and Referral of Bills

Senators Bouchard, Bullard, Carl, Dunaskiss, Steil, DeBeaussaert and McManus introduced

Senate Joint Resolution L, entitled

A joint resolution proposing an amendment to the state constitution of 1963, by amending section 3 of article IX and adding section 37 to article IX, to levy special assessments on the taxable value of the property assessed.

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

Senators Steil, Rogers, Stille and Stallings introduced

Senate Bill No. 436, entitled

A bill to amend 1972 PA 230, entitled "State construction code act of 1972," (MCL 125.1501 to 125.1531) by adding section 10a.

The bill was read a first and second time by title and referred to the Committee on Human Resources, Labor and Veterans Affairs.

Senator Steil introduced

Senate Bill No. 437, entitled

A bill to amend 1954 PA 116, entitled "Michigan election law," by amending section 796a (MCL 168.796a), as amended by 1996 PA 583.

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

Senator Steil introduced

Senate Bill No. 438, entitled

A bill to amend 1974 PA 198, entitled "An act to provide for the establishment of plant rehabilitation districts and industrial development districts in local governmental units; to provide for the exemption from certain taxes; to levy and collect a specific tax upon the owners of certain facilities; to provide for the disposition of the tax; to provide for the obtaining and transferring of an exemption certificate and to prescribe the contents of those certificates; to prescribe the powers and duties of the state tax commission and certain officers of local governmental units; and to provide penalties," by amending section 9 (MCL 207.559), as amended by 1996 PA 513.

The bill was read a first and second time by title and referred to the Committee on Economic Development, International Trade and Regulatory Affairs.

Senators Hart, Young, O'Brien, Peters, Miller, DeBeaussaert, A. Smith and Berryman introduced

Senate Bill No. 439, entitled

A bill to amend 1972 PA 239, entitled "McCauley-Traxler-Law-Bowman-McNeely lottery act," (MCL 432.1 to 432.47) by adding section 11a.

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

Senators DeBeaussaert, Miller, Dingell, Berryman, Byrum, Peters, Hoffman, Rogers and Hart introduced

Senate Bill No. 440, entitled

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," (MCL 760.1 to 776.22) by adding section 9a to chapter IX; and to repeal acts and parts of acts.

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

Senators DeBeaussaert, Miller, Dingell, Berryman, Byrum, Peters, Hoffman, Rogers and Hart introduced

Senate Bill No. 441, entitled

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending sections 110a, 506a, and 529a (MCL 750.110a, 750.506a, and 750.529a), section 110a as added by 1994 PA 270, and section 529a as added by 1994 PA 191.

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

Senators Stallings, Koivisto, Young, Conroy, DeBeaussaert, V. Smith, Hart, O'Brien, Byrum, Cherry, Berryman, Vaughn, Peters, Dingell, Miller, Hoffman, DeGrow, North, McManus, Schwarz, Cisky, Geake, Gast, Stille, Steil, Bullard, Bouchard, Gougeon, Carl and Rogers introduced

Senate Bill No. 442, entitled

A bill to amend 1931 PA 328, entitled "The Michigan penal code," (MCL 750.1 to 750.568) by adding section 411r.

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

Senators Peters, V. Smith and Dingell introduced

Senate Bill No. 443, entitled

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending sections 200, 201, 202, 203, 204, 204a, 205, 206, 210, 211, 212, 327, 327a, and 328 (MCL 750.200, 750.201, 750.202, 750.203, 750.204, 750.204a, 750.205, 750.206, 750.210, 750.211, 750.212, 750.327, 750.327a, and 750.328); and to repeal acts and parts of acts.

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

Senators Stille, Bennett, Rogers, Hoffman, McManus, Emmons, Schuette and A. Smith introduced

Senate Bill No. 444, entitled

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," (MCL 324.101 to 324.90106) by adding section 72105a.

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

Senators Van Regenmorter, North, Steil, Bullard, Shugars, Hoffman, Cisky, Schuette and Rogers introduced

Senate Bill No. 456, entitled

A bill to amend 1931 PA 328, entitled "The Michigan penal code," (MCL 750.1 to 750.568) by adding section 216b.

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

House Bill No. 4052, entitled

A bill to amend 1943 PA 240, entitled "State employees' retirement act," by amending section 27 (MCL 38.27), as amended by 1987 PA 241, and by adding sections 48a and 48b.

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 Appropriations.

House Bill No. 4443, entitled

A bill to amend 1976 PA 451, entitled "The revised school code," (MCL 380.1 to 380.1852) by adding section 1306.

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 Education.

House Bill No. 4478, entitled

A bill to amend 1943 PA 240, entitled "State employees' retirement act," by amending section 24 (MCL 38.24).

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 Appropriations.

Committee Reports

The Committee on Government Operations reported

House Bill No. 4339, entitled

A bill to amend 1976 PA 442, entitled "Freedom of information act," by amending section 1 (MCL 15.231), as amended by 1996 PA 553.

With the recommendation that the bill pass.

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

Bill Bullard, Jr.
Chairperson

To Report Out:

Yeas: Senators Bullard, Emmons, Hoffman, Miller and Hart

Nays: None

The bill was referred to the Committee of the Whole.

The Committee on Government Operations reported

Senate Resolution No. 27.

A resolution to request all state agencies and institutions to begin planning and budgeting for adjustments to computer software and operations necessitated by the turn of the century.

(For text of resolution, see Senate Journal No. 15, p. 160.)

With the recommendation that the resolution be adopted.

Bill Bullard, Jr.
Chairperson

To Report Out:

Yeas: Senators Bullard, Emmons, Hoffman, Miller and Hart
 Nays: None
 The resolution was placed on the order of Resolutions.

COMMITTEE ATTENDANCE REPORT

The Committee on Government Operations submits the following:
 Meeting held on Wednesday, April 16, 1997, at 1:00 p.m., Rooms 402 and 403, Capitol Building
 Present: Senators Bullard (C), Emmons, Hoffman, Miller and Hart

The Committee on Agriculture and Forestry reported

House Bill No. 4239, entitled

A bill to amend 1969 PA 287, entitled "An act to regulate pet shops, dog pounds and animal shelters," by amending the title and sections 1, 6, 7, 8, and 9 (MCL 287.331, 287.336, 287.337, 287.338, and 287.339), section 1 as amended by 1980 PA 214, and by adding sections 8a, 9a, and 9b.

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.

Walter North
 Chairperson

To Report Out:

Yeas: Senators North, Gougeon, McManus, Byrum and Berryman
 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 and Forestry submits the following:
 Meeting held on Tuesday, April 22, 1997, at 1:30 p.m., Room 100, Farnum Building
 Present: Senators North (C), Gougeon, McManus, Byrum and Berryman

COMMITTEE ATTENDANCE REPORT

The Joint Task Force on Revenue Sharing submits the following:
 Meeting held on Tuesday, April 22, 1997, at 1:00 p.m., Senate Appropriations Room, Capitol Building
 Present: Senators Steil (C), Gast and V. Smith

Scheduled Meetings

Community Health Appropriations Subcommittee - Wednesdays, April 30 and May 7, at 1:00 p.m., Senate Appropriations Room, 3rd Floor, Capitol Building (3-1707).

Health Policy and Senior Citizens Committee - Tuesday, April 29, at 3:00 p.m., Room 100, Farnum Building (3-0793).

Judiciary Committee - Tuesday, April 29, at 1:00 p.m., Room 100, Farnum Building (3-6920).

Senator DeGrow moved that the Senate adjourn.
 The motion prevailed, the time being 11:51 a.m.

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

CAROL MOREY VIVENTI
 Secretary of the Senate.