

**No. 52**  
**STATE OF MICHIGAN**  
**JOURNAL**  
**OF THE**  
**House of Representatives**  
**94th Legislature**  
**REGULAR SESSION OF 2008**

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House Chamber, Lansing, Wednesday, May 28, 2008.

10:00 a.m.

The House was called to order by the Speaker Pro Tempore.

The roll was called by the Clerk of the House of Representatives, who announced that a quorum was present.

Accavitti—present	Dillon—present	Lahti—present	Pearce—present
Acciavatti—present	Donigan—present	LaJoy—present	Polidori—present
Agema—present	Ebli—present	Law, David—present	Proos—present
Amos—excused	Elsenheimer—present	Law, Kathleen—present	Robertson—present
Angerer—present	Emmons—present	LeBlanc—present	Rocca—present
Ball—present	Espinoza—present	Leland—present	Sak—present
Bauer—present	Farrah—present	Lemmons—present	Schuitmaker—present
Bennett—present	Gaffney—present	Lindberg—present	Scott—present
Bieda—present	Garfield—excused	Marleau—present	Shaffer—present
Booher—present	Gillard—present	Mayes—present	Sheen—present
Brandenburg—present	Gonzales—present	McDowell—present	Sheltrown—present
Brown—present	Green—present	Meadows—present	Simpson—present
Byrnes—present	Griffin—e/d/s	Meekhof—present	Smith, Alma—present
Byrum—present	Hammel—present	Meisner—present	Smith, Virgil—e/d/s
Calley—present	Hammon—present	Melton—present	Spade—present
Casperson—present	Hansen—present	Meltzer—present	Stahl—present
Caswell—present	Hildenbrand—present	Miller—present	Stakoe—present
Caul—present	Hood—present	Moolenaar—present	Steil—present
Cheeks—e/d/s	Hoogendyk—present	Moore—present	Tobocman—present
Clack—present	Hopgood—present	Moss—present	Vagnozzi—present
Clemente—present	Horn—present	Nitz—present	Valentine—present
Condino—present	Huizenga—present	Nofs—present	Walker—present
Constan—present	Hune—present	Opsommer—present	Ward—e/d/s
Corriveau—present	Jackson—e/d/s	Palmer—present	Warren—present
Coulouris—present	Johnson—present	Palsrok—present	Wenke—present
Cushingberry—present	Jones, Rick—present	Pastor—present	Wojno—present
Dean—present	Jones, Robert—present	Pavlov—present	Young—e/d/s
DeRoche—excused	Knollenberg—present		

e/d/s = entered during session

Rep. Robert B. Jones, from the 60th District, offered the following invocation:

“God, we magnify Your name and thank You for blessing us in so many ways that are seen and unseen. We ask You to forgive us of our sins.

Father, You said that if we have the faith of a mustard seed that we could command the mountain to move and the mountain would move. We ask for mercy on us so that we have the faith to move Michigan forward.

Father, let us put service over self and do all that we can for Michigan. Let us move with bold action and faith that, through You, O Lord, Your blessing upon us as a state and people so that we will build a great place in Michigan for our children. We ask for Your blessing in Jesus’ name for the world, our great nation and our great state. We ask that You examine our hearts and remove any hypocrisy and replace it with a pure spirit. Father, guide us to make decisions that will bless people with jobs so that we can live and serve You. We ask these Blessings in Your Son, Jesus’ name. Amen.”

Rep. Booher moved that Reps. Amos, DeRoche and Garfield be excused from today’s session.  
The motion prevailed.

### Messages from the Senate

The Speaker laid before the House

#### **House Bill No. 5963, entitled**

A bill entering into the interstate compact on educational opportunity for military children: and for related purposes. (The bill was received from the Senate on May 21, with amendments and immediate effect given by the Senate, consideration of which, under the rules, was postponed until May 22, see House Journal No. 49, p. 1141.)

The question being on concurring in the amendments made to the bill by the Senate,

The amendments were concurred in, a majority of the members serving voting therefor, by yeas and nays, as follows:

#### **Roll Call No. 445**

#### **Yeas—101**

Accavitti	Donigan	LaJoy	Pavlov
Acciavatti	Ebli	Law, David	Pearce
Agema	Elsenheimer	Law, Kathleen	Polidori
Angerer	Emmons	LeBlanc	Proos
Ball	Espinoza	Leland	Robertson
Bauer	Farrah	Lemmons	Rocca
Bennett	Gaffney	Lindberg	Sak
Bieda	Gillard	Marleau	Schuitmaker
Booher	Gonzales	Mayer	Scott
Brandenburg	Green	McDowell	Shaffer
Brown	Hammel	Meadows	Sheen
Byrnes	Hammon	Meekhof	Sheltrown
Byrum	Hansen	Meisner	Simpson
Calley	Hildenbrand	Melton	Smith, Alma
Casperson	Hood	Meltzer	Spade
Caswell	Hoogendyk	Miller	Stahl
Caul	Hopgood	Moolenaar	Stakoe
Clack	Horn	Moore	Steil
Clemente	Huizenga	Moss	Tobocman
Condino	Hune	Nitz	Vagnozzi
Constan	Johnson	Nofs	Valentine
Corriveau	Jones, Rick	Opsommer	Walker
Coulouris	Jones, Robert	Palmer	Warren
Cushingberry	Knollenberg	Palsrok	Wenke

Dean  
Dillon

Lahti

Pastor

Wojno

**Nays—0**

In The Chair: Sak

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

Reps. Ward and Young entered the House Chambers.

**House Bill No. 5539, entitled**

A bill to amend 1996 PA 381, entitled "Brownfield redevelopment financing act," (MCL 125.2651 to 125.2672) by adding section 15a.

The Senate has substituted (S-1) the bill.

The Senate has passed the bill as substituted (S-1), ordered that it be given immediate effect and pursuant to Joint Rule 20, inserted the full title.

The Speaker announced that pursuant to Rule 42, the bill was laid over one day.

Rep. Tobocman moved that Rule 42 be suspended.

The motion prevailed, 3/5 of the members present voting therefor.

The question being on concurring in the (S-1) made to the bill by the Senate,

The substitute (S-1) was concurred in, a majority of the members serving voting therefor, by yeas and nays, as follows:

**Roll Call No. 446****Yeas—101**

Accavitti	Donigan	Law, David	Pearce
Acciavatti	Ebli	Law, Kathleen	Polidori
Agema	Elsenheimer	LeBlanc	Proos
Angerer	Emmons	Leland	Robertson
Ball	Espinoza	Lemmons	Rocca
Bauer	Farrah	Lindberg	Sak
Bennett	Gaffney	Marleau	Schuitmaker
Bieda	Gillard	Mayes	Scott
Booher	Gonzales	McDowell	Shaffer
Brandenburg	Green	Meadows	Sheltrown
Brown	Hammel	Meekhof	Simpson
Byrnes	Hammon	Meisner	Smith, Alma
Byrum	Hansen	Melton	Spade
Calley	Hildenbrand	Meltzer	Stahl
Casperson	Hood	Miller	Stakoe
Caswell	Hopgood	Moolenaar	Steil
Caul	Horn	Moore	Tobocman
Clack	Huizenga	Moss	Vagnozzi
Clemente	Hune	Nitz	Valentine
Condino	Johnson	Nofs	Walker
Constan	Jones, Rick	Opsommer	Ward
Corriveau	Jones, Robert	Palmer	Warren
Coulouris	Knollenberg	Palsrok	Wenke

Cushingberry  
Dean  
Dillon

Lahti  
LaJoy

Pastor  
Pavlov

Wojno  
Young

**Nays—0**

In The Chair: Sak

The House agreed to the full title.

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

Rep. Griffin entered the House Chambers.

**House Bill No. 5540, entitled**

A bill to amend 1986 PA 281, entitled “The local development financing act,” (MCL 125.2151 to 125.2174) by adding section 11b.

The Senate has substituted (S-1) the bill.

The Senate has passed the bill as substituted (S-1), ordered that it be given immediate effect and pursuant to Joint Rule 20, inserted the full title.

The Speaker announced that pursuant to Rule 42, the bill was laid over one day.

Rep. Tobocman moved that Rule 42 be suspended.

The motion prevailed, 3/5 of the members present voting therefor.

The question being on concurring in the (S-1) made to the bill by the Senate,

The substitute (S-1) was concurred in, a majority of the members serving voting therefor, by yeas and nays, as follows:

**Roll Call No. 447**

**Yeas—104**

Accavitti	Donigan	LaJoy	Pearce
Acciavatti	Ebli	Law, David	Polidori
Agema	Elsenheimer	Law, Kathleen	Proos
Angerer	Emmons	LeBlanc	Robertson
Ball	Espinoza	Leland	Rocca
Bauer	Farrah	Lemmons	Sak
Bennett	Gaffney	Lindberg	Schuitmaker
Bieda	Gillard	Marleau	Scott
Booher	Gonzales	Mayes	Shaffer
Brandenburg	Green	McDowell	Sheen
Brown	Griffin	Meadows	Sheltrown
Byrnes	Hammel	Meekhof	Simpson
Byrum	Hammon	Meisner	Smith, Alma
Calley	Hansen	Melton	Spade
Casperson	Hildenbrand	Meltzer	Stahl
Caswell	Hood	Miller	Stakoe
Caul	Hoogendyk	Moolenaar	Steil
Clack	Hopgood	Moore	Tobocman
Clemente	Horn	Moss	Vagnozzi
Condino	Huizenga	Nitz	Valentine
Constan	Hune	Nofs	Walker
Corriveau	Johnson	Opsommer	Ward

Coulouris	Jones, Rick	Palmer	Warren
Cushingberry	Jones, Robert	Palsrok	Wenke
Dean	Knollenberg	Pastor	Wojno
Dillon	Lahti	Pavlov	Young

**Nays—0**

In The Chair: Sak

The House agreed to the full title.

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

**House Bill No. 5541, entitled**

A bill to amend 1980 PA 450, entitled “The tax increment finance authority act,” (MCL 125.1801 to 125.1830) by adding section 12b.

The Senate has substituted (S-1) the bill.

The Senate has passed the bill as substituted (S-1), ordered that it be given immediate effect and pursuant to Joint Rule 20, inserted the full title.

The Speaker announced that pursuant to Rule 42, the bill was laid over one day.

Rep. Tobocman moved that Rule 42 be suspended.

The motion prevailed, 3/5 of the members present voting therefor.

The question being on concurring in the (S-1) made to the bill by the Senate,

The substitute (S-1) was concurred in, a majority of the members serving voting therefor, by yeas and nays, as follows:

**Roll Call No. 448****Yeas—104**

Accavitti	Donigan	LaJoy	Pearce
Acciavatti	Ebli	Law, David	Polidori
Agema	Elsenheimer	Law, Kathleen	Proos
Angerer	Emmons	LeBlanc	Robertson
Ball	Espinoza	Leland	Rocca
Bauer	Farrah	Lemmons	Sak
Bennett	Gaffney	Lindberg	Schuitmaker
Bieda	Gillard	Marleau	Scott
Booher	Gonzales	Mayes	Shaffer
Brandenburg	Green	McDowell	Sheen
Brown	Griffin	Meadows	Sheltrown
Byrnes	Hammel	Meekhof	Simpson
Byrum	Hammon	Meisner	Smith, Alma
Calley	Hansen	Melton	Spade
Casperson	Hildenbrand	Meltzer	Stahl
Caswell	Hood	Miller	Stakoe
Caul	Hoogendyk	Moolenaar	Steil
Clack	Hopgood	Moore	Tobocman
Clemente	Horn	Moss	Vagnozzi
Condino	Huizenga	Nitz	Valentine
Constan	Hune	Nofs	Walker
Corriveau	Johnson	Opsommer	Ward
Coulouris	Jones, Rick	Palmer	Warren
Cushingberry	Jones, Robert	Palsrok	Wenke
Dean	Knollenberg	Pastor	Wojno
Dillon	Lahti	Pavlov	Young

**Nays—0**

In The Chair: Sak

The House agreed to the full title.

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

Rep. Virgil Smith entered the House Chambers.

**House Bill No. 5542, entitled**

A bill to amend 1975 PA 197, entitled "An act to provide for the establishment of a downtown development authority; to prescribe its powers and duties; to correct and prevent deterioration in business districts; to encourage historic preservation; to authorize the acquisition and disposal of interests in real and personal property; to authorize the creation and implementation of development plans in the districts; to promote the economic growth of the districts; to create a board; to prescribe its powers and duties; to authorize the levy and collection of taxes; to authorize the issuance of bonds and other evidences of indebtedness; to authorize the use of tax increment financing; to reimburse downtown development authorities for certain losses of tax increment revenues; and to prescribe the powers and duties of certain state officials," (MCL 125.1651 to 125.1681) by adding section 13c.

The Senate has substituted (S-1) the bill.

The Senate has passed the bill as substituted (S-1) and ordered that it be given immediate effect.

The Speaker announced that pursuant to Rule 42, the bill was laid over one day.

Rep. Tobocman moved that Rule 42 be suspended.

The motion prevailed, 3/5 of the members present voting therefor.

The question being on concurring in the (S-1) made to the bill by the Senate,

The substitute (S-1) was concurred in, a majority of the members serving voting therefor, by yeas and nays, as follows:

**Roll Call No. 449****Yeas—105**

Accavitti	Ebli	Law, David	Polidori
Acciavatti	Elsenheimer	Law, Kathleen	Proos
Agema	Emmons	LeBlanc	Robertson
Angerer	Espinoza	Leland	Rocca
Ball	Farrah	Lemmons	Sak
Bauer	Gaffney	Lindberg	Schuitmaker
Bennett	Gillard	Marleau	Scott
Bieda	Gonzales	Mayes	Shaffer
Booher	Green	McDowell	Sheen
Brandenburg	Griffin	Meadows	Sheltrown
Brown	Hammel	Meekhof	Simpson
Byrnes	Hammon	Meisner	Smith, Alma
Byrum	Hansen	Melton	Smith, Virgil
Calley	Hildenbrand	Meltzer	Spade
Casperson	Hood	Miller	Stahl
Caswell	Hoogendyk	Moolenaar	Stakoe
Caul	Hopgood	Moore	Steil
Clack	Horn	Moss	Tobocman
Clemente	Huizenga	Nitz	Vagnozzi
Condino	Hune	Nofs	Valentine
Constan	Johnson	Opsommer	Walker
Corriveau	Jones, Rick	Palmer	Ward

Coulouris  
Cushingberry  
Dean  
Dillon  
Donigan

Jones, Robert  
Knollenberg  
Lahti  
LaJoy

Palsrok  
Pastor  
Pavlov  
Pearce

Warren  
Wenke  
Wojno  
Young

### Nays—0

In The Chair: Sak

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

Rep. Jackson entered the House Chambers.

Rep. Meekhof moved that Rep. Acciavatti be excused temporarily from today's session.  
The motion prevailed.

By unanimous consent the House returned to the order of

### Reports of Select Committees

#### First Conference Report

The Committee of Conference on the matters of difference between the two Houses concerning  
**House Bill No. 4184, entitled**

A bill to amend 1953 PA 232, entitled "Corrections code of 1953," by amending section 34a (MCL 791.234a), as amended by 1998 PA 315.

Recommends:

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

A bill to amend 1953 PA 232, entitled "Corrections code of 1953," by amending section 34a (MCL 791.234a), as amended by 1998 PA 315; and to repeal acts and parts of acts.

#### THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 34a. (1) A prisoner sentenced to an indeterminate term of imprisonment under the jurisdiction of the department, regardless of when he or she was sentenced, shall be considered by the department for placement in a special alternative incarceration unit established under section 3 of the special alternative incarceration act, 1988 PA 287, MCL 798.13, if the prisoner meets the eligibility requirements of subsections (2) and (3). For a prisoner committed to the jurisdiction of the department on or after March 19, 1992, the department shall determine before the prisoner leaves the reception center whether the prisoner is eligible for placement in a special alternative incarceration unit, although actual placement may take place at a later date. A determination of eligibility does not guarantee placement in a unit.

(2) To be eligible for placement in a special alternative incarceration unit, the prisoner shall meet all of the following requirements:

(a) The prisoner's minimum sentence does not exceed either of the following limits, as applicable:

(i) 24 months or less for a violation of section 110 of the Michigan penal code, 1931 PA 328, MCL 750.110, if the violation involved any occupied dwelling house.

(ii) 36 months or less for any other crime.

~~(b) The prisoner has never previously been placed in a special alternative incarceration unit as either a prisoner or a probationer, unless he or she was removed from a special alternative incarceration unit for medical reasons as specified in subsection (6).~~

~~(B) (e)~~ The prisoner is physically able to participate in the program.

~~(C) (d)~~ The prisoner does not appear to have any mental disability that would prevent participation in the program.

**(D)** ~~(e)~~—The prisoner is serving his or her first **OR SECOND** prison sentence.

**(E)** ~~(f)~~—At the time of sentencing, the judge did not prohibit participation in the program in the judgment of sentence.

**(F)** ~~(g)~~—The prisoner is otherwise suitable for the program, as determined by the department.

**(G)** ~~(h)~~—The prisoner **HAS NOT SERVED, AND** is not serving, a sentence for any of the following crimes:

(i) A violation of section 11, 49, 80, 83, 89, 91, 157b, 158, 207, 260, 316, 317, 327, 328, 335a, 338, 338a, 338b, 349, 349a, 350, 422, 436, 511, ~~516, 517~~, 520b, 529, 529a, 531, or 544 of the Michigan penal code, 1931 PA 328, MCL 750.11, 750.49, 750.80, 750.83, 750.89, 750.91, 750.157b, 750.158, 750.207, 750.260, 750.316, 750.317, 750.327, 750.328, 750.335a, 750.338, 750.338a, 750.338b, 750.349, 750.349a, 750.350, 750.422, 750.436, 750.511, ~~750.516, 750.517~~, 750.520b, 750.529, 750.529a, 750.531, and 750.544.

(ii) A violation of section 145c, 520c, 520d, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.145c, 750.520c, 750.520d, and 750.520g.

(iii) A violation of section 72, 73, or 75 of the Michigan penal code, 1931 PA 328, MCL 750.72, 750.73, and 750.75.

(iv) A violation of section 86, 112, 136b, 193, 195, 213, 319, 321, 329, or 397 of the Michigan penal code, 1931 PA 328, MCL 750.86, 750.112, 750.136b, 750.193, 750.195, 750.213, 750.319, 750.321, 750.329, and 750.397.

(v) A violation of section 2 of 1968 PA 302, MCL 752.542.

(vi) An attempt to commit a crime described in subparagraphs (i) to (v).

(vii) A violation occurring on or after January 1, 1992, of section 625(4) or (5) of the Michigan vehicle code, 1949 PA 300, MCL 257.625.

(viii) A crime for which the prisoner was punished pursuant to section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

(3) A prisoner who is serving a sentence for a violation of section 7401 or 7403 of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, and who has previously been convicted for a violation of section 7401 or 7403(2)(a), (b), or (e) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, is not eligible for placement in a special alternative incarceration unit until after he or she has served the equivalent of the mandatory minimum sentence prescribed by statute for that violation.

(4) If the sentencing judge prohibited a prisoner's participation in the special alternative incarceration program in the judgment of sentence, that prisoner shall not be placed in a special alternative incarceration unit. If the **PRISONER IS SERVING HIS OR HER FIRST PRISON SENTENCE AND THE** sentencing judge permitted the prisoner's participation in the special alternative incarceration program in the judgment of sentence, that prisoner may be placed in a special alternative incarceration unit if the department determines that the prisoner also meets the requirements of subsections (2) and (3). If the **PRISONER IS SERVING HIS OR HER FIRST PRISON SENTENCE AND THE** sentencing judge neither prohibited nor permitted a prisoner's participation in the special alternative incarceration program in the judgment of sentence, **OR IF THE PRISONER IS SERVING HIS OR HER SECOND PRISON SENTENCE REGARDLESS OF WHETHER OR NOT THE JUDGE PERMITTED THE PRISONER'S PARTICIPATION IN THE PROGRAM,** and the department determines that the prisoner meets the eligibility requirements of subsections (2) and (3), the department shall notify the judge or the judge's successor, the prosecuting attorney for the county in which the prisoner was sentenced, and any victim of the crime for which the prisoner was committed if the victim has submitted to the department a written request for any notification pursuant to section 19(1) of the **WILLIAM VAN REGENMORTER** crime victim's rights act, 1985 PA 87, MCL 780.769, of the proposed placement of the prisoner in the special alternative incarceration unit. **IF THE PRISONER IS SERVING HIS OR HER FIRST PRISON SENTENCE, THE NOTICES SHALL BE SENT** not later than 30 days before placement is intended to occur. **IF THE PRISONER IS SERVING HIS OR HER SECOND PRISON SENTENCE, THE NOTICES SHALL BE SENT NOT LATER THAN 45 DAYS BEFORE THE PLACEMENT IS INTENDED TO OCCUR.** The department shall not place the prisoner in a special alternative incarceration unit unless the sentencing judge, or the judge's successor, notifies the department, in writing, that he or she does not object to the proposed placement. In making the decision on whether or not to object, the judge, or judge's successor, shall review any impact statement submitted pursuant to section 14 of the **WILLIAM VAN REGENMORTER** crime victim's rights act, 1985 PA 87, MCL 780.764, by the victim or victims of the crime of which the prisoner was convicted.

(5) Notwithstanding subsection (4), a prisoner shall not be placed in a special alternative incarceration unit unless the prisoner consents to that placement and agrees that the department may suspend or restrict privileges generally afforded other prisoners including, but not limited to, the areas of visitation, property, mail, publications, commissary, library, and telephone access. However, the department may not suspend or restrict the prisoner's access to the prisoner grievance system.

**(6) BEGINNING SEPTEMBER 30, 2008, AND NOTWITHSTANDING SUBSECTIONS (4) AND (5), A PRISONER SHALL NOT BE PLACED IN A SPECIAL ALTERNATIVE INCARCERATION UNIT UNLESS ALL OF THE FOLLOWING CONDITIONS ARE MET FOR THE PRISONER AT THE SPECIAL ALTERNATIVE INCARCERATION UNIT:**

**(A) UPON ENTRY INTO THE SPECIAL ALTERNATIVE INCARCERATION UNIT, A VALIDATED RISK AND NEED ASSESSMENT FROM WHICH A PRISONER-SPECIFIC TRANSITION ACCOUNTABILITY PLAN AND PRISONER-SPECIFIC PROGRAMMING DURING PROGRAM ENROLLMENT ARE UTILIZED.**



**(B) INTERACTION WITH COMMUNITY-BASED SERVICE PROVIDERS THROUGH ESTABLISHED PRISON IN-REACH SERVICES FROM THE COMMUNITY TO WHICH THE PRISONER WILL RETURN IS UTILIZED.**

**(C) PRISONER DISCHARGE PLANNING IS UTILIZED.**

**(D) COMMUNITY FOLLOW-UP SERVICES ARE UTILIZED.**

(7) ~~(6)~~ A prisoner may be placed in a special alternative incarceration program for a period of not less than 90 days or more than 120 days. If, during that period, the prisoner misses more than 5 days of program participation due to medical excuse for illness or injury occurring after he or she was placed in the program, the period of placement shall be increased by the number of days missed, beginning with the sixth day of medical excuse, up to a maximum of 20 days. However, the total number of days a prisoner may be placed in this program, including days missed due to medical excuse, shall not exceed 120 days. A medical excuse shall be verified by a physician's statement. A prisoner who is medically unable to participate in the program for more than 25 days shall be returned to a state correctional facility but may be reassigned to the program if the prisoner meets the eligibility requirements of subsections (2) and (3).

(8) ~~(7)~~ Upon certification of completion of the special alternative incarceration program, the prisoner shall be placed on parole. A prisoner paroled under this section shall have conditions of parole as determined appropriate by the parole board and shall be placed on parole for not less than 18 months, or the balance of the prisoner's minimum sentence, whichever is greater, with at least the first 120 days under intensive supervision.

(9) ~~(8)~~ The parole board may suspend or revoke parole for any prisoner paroled under this section subject to sections 39a and 40a. For a prisoner other than a prisoner subject to disciplinary time, if parole is revoked before the expiration of the prisoner's minimum sentence, less disciplinary credits, the parole board shall forfeit, pursuant to section 33(13) of 1893 PA 118, MCL 800.33, all disciplinary credits that were accumulated during special alternative incarceration, and the prisoner shall be considered for parole pursuant to section 35.

(10) ~~(9)~~ On March 19, 1993, and annually after that time, the department shall report to the legislature the impact of the operation of this section, including a report concerning recidivism.

**(11) THE DEPARTMENT SHALL CONTRACT ANNUALLY FOR THIRD PARTY EVALUATIONS THAT REPORT ON BOTH OF THE FOLLOWING:**

**(A) THE IMPLEMENTATION OF THE REQUIREMENTS OF SUBSECTION (6).**

**(B) THE SUCCESS OF THE SPECIAL ALTERNATIVE INCARCERATION PROGRAM AS REVISED UNDER SUBSECTION (6), AS EVIDENCED BY THE EXTENT TO WHICH PARTICIPANTS SUBSEQUENTLY VIOLATE THE CONDITIONS OF THEIR PAROLE, HAVE THEIR ORDERS OF PAROLE REVOKED, OR REVICTIMIZE AS EVIDENCED BY BEING ARRESTED OR CONVICTED FOR NEW OFFENSES, ABSCONDING FROM PAROLE, OR HAVING OUTSTANDING WARRANTS.**

**(12) EACH PRISONER OR PROBATIONER PLACED IN THE SPECIAL ALTERNATIVE INCARCERATION PROGRAM SHALL FULLY PARTICIPATE IN THE MICHIGAN PRISONER REENTRY INITIATIVE NOT LATER THAN THE FOLLOWING DATE, AS APPLICABLE:**

**(A) EACH PRISONER SERVING HIS OR HER SECOND PRISON SENTENCE SHALL PARTICIPATE NOT LATER THAN JUNE 1, 2008.**

**(B) EACH PRISONER SERVING HIS OR HER FIRST PRISON SENTENCE SHALL PARTICIPATE NOT LATER THAN AUGUST 1, 2008.**

**(C) EACH PROBATIONER SHALL PARTICIPATE NOT LATER THAN SEPTEMBER 1, 2008.**

**(13) THIS SECTION IS REPEALED EFFECTIVE SEPTEMBER 30, 2009.**

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

A bill to amend 1953 PA 232, entitled "An act to revise, consolidate, and codify the laws relating to probationers and probation officers, to pardons, reprieves, commutations, and paroles, to the administration of correctional institutions, correctional farms, and probation recovery camps, to prisoner labor and correctional industries, and to the supervision and inspection of local jails and houses of correction; to provide for the siting of correctional facilities; to create a state department of corrections, and to prescribe its powers and duties; to provide for the transfer to and vesting in said department of powers and duties vested by law in certain other state boards, commissions, and officers, and to abolish certain boards, commissions, and offices the powers and duties of which are transferred by this act; to allow for the operation of certain facilities by private entities; to prescribe the powers and duties of certain other state departments and agencies; to provide for the creation of a local lockup advisory board; to provide for a lifetime electronic monitoring program; to prescribe penalties for the violation of the provisions of this act; to make certain appropriations; to repeal certain parts of this act on specific dates; and to repeal all acts and parts of acts inconsistent with the provisions of this act," by amending section 34a (MCL 791.234a), as amended by 1998 PA 315; and to repeal acts and parts of acts.

Paul Condino  
Alma Wheeler Smith  
Rick Jones  
Conferees for the House

Alan L. Cropsey  
Gretchen Whitmer  
Conferees for the Senate

The Speaker announced that under Joint Rule 9 the conference report would lie over one day.

Rep. Tobocman moved pursuant to Joint Rule 9, that the Journal printing requirement be suspended, printed copies of the conference report having been made available to each Member.

The motion prevailed.

The question being on the adoption of the conference report,

The conference report was then adopted, a majority of the members serving voting therefor, by yeas and nays, as follows:

**Roll Call No. 450****Yeas—102**

Accavitti	Elsenheimer	LeBlanc	Proos
Agema	Emmons	Leland	Robertson
Angerer	Espinoza	Lemmons	Rocca
Ball	Farrah	Lindberg	Sak
Bauer	Gaffney	Marleau	Schuitmaker
Bennett	Gillard	Mayes	Scott
Bieda	Gonzales	McDowell	Shaffer
Booher	Green	Meadows	Sheen
Brandenburg	Griffin	Meekhof	Sheltrown
Brown	Hammel	Meisner	Simpson
Byrnes	Hammon	Melton	Smith, Alma
Byrum	Hansen	Meltzer	Smith, Virgil
Calley	Hildenbrand	Miller	Spade
Casperson	Hood	Moolenaar	Stahl
Caul	Hoogendyk	Moore	Stakoe
Clack	Hopgood	Moss	Steil
Clemente	Horn	Nitz	Tobocman
Condino	Huizenga	Nofs	Vagnozzi
Constan	Jackson	Opsommer	Valentine
Corriveau	Johnson	Palmer	Walker
Coulouris	Jones, Rick	Palsrok	Ward
Cushingberry	Jones, Robert	Pastor	Warren
Dean	Knollenberg	Pavlov	Wenke
Dillon	Lahti	Pearce	Wojno
Donigan	LaJoy	Polidori	Young
Ebli	Law, Kathleen		

**Nays—3**

Caswell	Hune	Law, David
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In The Chair: Sak

By unanimous consent the House returned to the order of

**Motions and Resolutions**

Rep. Tobocman moved that Rule 42 be suspended.

The motion prevailed, 3/5 of the members present voting therefor.

Rep. Tobocman moved that the Committee on Appropriations be discharged from further consideration of **Senate Bill No. 239**.

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

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

**Second Reading of Bills**

**Senate Bill No. 239, entitled**

A bill to make appropriations for the Michigan strategic fund and certain other state purposes for the fiscal year ending September 30, 2008; to provide for the expenditure of the appropriations; to provide certain conditions on appropriations; and to provide for the disposition of fees and other income received by certain state agencies.

The bill was read a second time.

Rep. Hood moved to substitute (H-2) the bill.

The motion prevailed and the substitute (H-2) was adopted, a majority of the members serving voting therefor.

The Speaker Pro Tempore called Associate Speaker Pro Tempore Byrnes to the Chair.

Rep. Proos moved to amend the bill as follows:

1. Amend page 2, line 4, by striking out all of line 4 through line 7 of page 26 and inserting:

“Sec. 101. Subject to the conditions set forth in this act, the amounts listed in this part are appropriated for certain capital outlay projects at the various state agencies and institutions for the fiscal year ending September 30, 2008, from the funds indicated in this part. The following is a summary of the appropriations in this part:

**CAPITAL OUTLAY**

**APPROPRIATIONS SUMMARY**

GROSS APPROPRIATION .....	\$ 183,191,300
Interdepartmental grant revenues:	
Total interdepartmental grants and intradepartmental transfers .....	0
ADJUSTED GROSS APPROPRIATION .....	\$ 183,191,300
Federal revenues:	
Total federal revenues.....	162,867,600
Special revenue funds:	
Total local revenues.....	15,209,400
Total private revenues.....	0
Total other state restricted revenues .....	5,114,300
State general fund/general purpose .....	\$ 0

**Sec. 102. DEPARTMENT OF TRANSPORTATION - AIRPORT IMPROVEMENT**

**PROGRAMS**

Airport safety, protection, and improvement program .....	183,191,300
GROSS APPROPRIATION .....	\$ 183,191,300
Appropriated from:	
Federal revenues:	
DOT, federal aviation administration .....	162,867,600
Special revenue funds:	
Local aeronautics match.....	15,209,400
State aeronautics fund .....	5,114,300
State general fund/general purpose .....	\$ 0

and adjusting the subtotals, totals, and section 201 accordingly.”

2. Amend page 26, line 11, by striking out all of line 11 through line 14 of page 50 and inserting:

“Sec. 201. Pursuant to section 30 of article IX of the state constitution of 1963, total state spending from state resources under part 1 for fiscal year 2007-2008 is \$5,114,300.00 and state spending from state resources to be paid to local units of government for fiscal year 2007-2008 is \$5,114,300.00. The itemized statement below identifies appropriations from which spending to units of local government will occur:

**CAPITAL OUTLAY**

Department of transportation - airport safety, protection, and improvement program.....	5,114,300
TOTAL.....	\$ 5,114,300

Sec. 202. The appropriations authorized under this act are subject to the management and budget act, 1984 PA 431, MCL 18.1101 to 19.1594.”

The question being on the adoption of the amendments offered by Rep. Proos,  
Rep. Proos demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendments offered by Rep. Proos,  
After debate,

Rep. Tobocman demanded the previous question.

The demand was supported.

The question being, "Shall the main question now be put?"

The previous question was ordered.

The question being on the adoption of the amendments offered by Rep. Proos,

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

**Roll Call No. 451****Yeas—48**

Acciavatti	Green	Meltzer	Proos
Agema	Hansen	Moolenaar	Robertson
Ball	Hildenbrand	Moore	Rocca
Booher	Hoogendyk	Moss	Schuitmaker
Brandenburg	Horn	Nitz	Shaffer
Calley	Huizenga	Nofs	Sheen
Casperson	Jones, Rick	Opsommer	Stahl
Caswell	Knollenberg	Palmer	Stakoe
Caul	LaJoy	Palsrok	Steil
Elsenheimer	Law, David	Pastor	Walker
Emmons	Marleau	Pavlov	Ward
Gaffney	Meekhof	Pearce	Wenke

**Nays—58**

Accavitti	Dean	Johnson	Polidori
Angerer	Dillon	Jones, Robert	Sak
Bauer	Donigan	Lahti	Scott
Bennett	Ebli	Law, Kathleen	Sheltrown
Bieda	Espinoza	LeBlanc	Simpson
Brown	Farrah	Leland	Smith, Alma
Byrnes	Gillard	Lemmons	Smith, Virgil
Byrum	Gonzales	Lindberg	Spade
Clack	Griffin	Mayes	Tobocman
Clemente	Hammel	McDowell	Vagnozzi
Condino	Hammon	Meadows	Valentine
Constan	Hood	Meisner	Warren
Corriveau	Hopgood	Melton	Wojno
Coulouris	Hune	Miller	Young
Cushingberry	Jackson		

In The Chair: Byrnes

Rep. Tobocman moved that the bill be placed on the order of Third Reading of Bills.

The motion prevailed.

Rep. Tobocman moved that the bill be placed on its immediate passage.

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

Rep. Cheeks entered the House Chambers.

By unanimous consent the House returned to the order of

**Third Reading of Bills**

**Senate Bill No. 239, entitled**

A bill to make appropriations for the Michigan strategic fund and certain other state purposes for the fiscal year ending September 30, 2008; to provide for the expenditure of the appropriations; to provide certain conditions on appropriations; and to provide for the disposition of fees and other income received by certain state agencies.

Was read a third time and passed, a majority of the members serving voting therefor, by yeas and nays, as follows:

**Roll Call No. 452**

**Yeas—63**

Accavitti	Cushingberry	Jackson	Rocca
Angerer	Dean	Johnson	Sak
Bauer	Dillon	Jones, Robert	Schuitmaker
Bennett	Donigan	Lahti	Scott
Bieda	Ebli	Law, Kathleen	Sheltrown
Brown	Emmons	LeBlanc	Simpson
Byrnes	Espinoza	Leland	Smith, Alma
Byrum	Farrah	Lemmons	Smith, Virgil
Caul	Gaffney	Lindberg	Spade
Cheeks	Gillard	Mayes	Tobocman
Clack	Gonzales	McDowell	Vagnozzi
Clemente	Griffin	Meadows	Valentine
Condino	Hammel	Meisner	Warren
Constan	Hammon	Melton	Wojno
Corriveau	Hood	Miller	Young
Coulouris	Hopgood	Polidori	

**Nays—44**

Acciavatti	Hildenbrand	Meltzer	Pearce
Agema	Hoogendyk	Moolenaar	Proos
Ball	Horn	Moore	Robertson
Booher	Huizenga	Moss	Shaffer
Brandenburg	Hune	Nitz	Sheen
Calley	Jones, Rick	Nofs	Stahl
Casperson	Knollenberg	Opsommer	Stakoe
Caswell	LaJoy	Palmer	Steil
Elsenheimer	Law, David	Palsrok	Walker
Green	Marleau	Pastor	Ward
Hansen	Meekhof	Pavlov	Wenke

In The Chair: Byrnes

The question being on agreeing to the title of the bill,

Rep. Tobocman moved to amend the title to read as follows:

A bill to make appropriations for capital outlay and certain other purposes; to provide for a capital outlay program; to set forth the provisions for its implementation within the budgetary process; to make appropriations for planning and construction at state institutions and the acquisition of land; to provide for the elimination of fire hazards at the institutions; to provide for certain special maintenance, remodeling, alteration, renovation, or demolition of and additions to projects at state institutions; to provide for elimination of occupational safety and health hazards at state agencies and institutions;

to provide for the award of contracts; to provide for expenditures under the supervision of the director of the department of management and budget and the state administrative board; to provide for certain advances from the general fund; to prescribe powers and duties of certain state officers and agencies; to require certain reports, plans, and agreements; to provide for leases; to prescribe standards and conditions relating to the appropriations; to make appropriations for the fiscal year ending September 30, 2008; and to provide for the expenditure of the appropriations.

The motion prevailed.

The House agreed to the title as amended.

Rep. Tobocman moved that the bill be given immediate effect.

The motion prevailed, 2/3 of the members serving voting therefor.

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Rep. Agema, having reserved the right to explain his protest against the passage of the bill, made the following statement:  
"Mr. Speaker and members of the House:

Unbridled spending clocked in an outlay bill that just dealt with airport spending. This bill was not vented. The Capital outlay budget is a budget buster - nearly \$2 billion. This bill once again is filled with pork. The interest alone on this 'changed bill' is \$80 million. Once again the democrats have proven that partisan politics reigns supreme with a bill shoved down our throat without adequate discussion that will break the bank for the people of the state of Michigan. Lansing just can't stop spending someone else's money at a rate that can not be sustained. This is absurdity considering our economic condition."

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The Speaker Pro Tempore resumed the Chair.

By unanimous consent the House returned to the order of

#### **Motions and Resolutions**

Rep. Tobocman moved that Rule 42 be suspended.

The motion prevailed, 3/5 of the members present voting therefor.

Rep. Tobocman moved that the Committee on Education be discharged from further consideration of **House Bill No. 5074**.

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

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

#### **Second Reading of Bills**

##### **House Bill No. 5074, entitled**

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 12601 and 12611 (MCL 333.12601 and 333.12611), section 12601 as amended by 1988 PA 315 and section 12611 as amended by 1993 PA 217, and by adding section 12603a.

The bill was read a second time.

Rep. Hammon moved to substitute (H-1) the bill.

The motion prevailed and the substitute (H-1) was adopted, a majority of the members serving voting therefor.

Rep. Farrah moved to amend the bill as follows:

1. Amend page 1, line 1, by striking out the balance of the bill and inserting:

"Sec. 12601. (1) As used in this part:

(A) "**CASINO**" MEANS THAT TERM AS DEFINED IN SECTION 2 OF THE MICHIGAN GAMING CONTROL AND REVENUE ACT, 1996 IL 1, MCL 432.202. CASINO DOES NOT INCLUDE A CASINO OPERATED UNDER THE INDIAN GAMING REGULATORY ACT, PUBLIC LAW 100-497, 102 STAT. 2467.

~~(B) (a)~~—“Child caring institution” and “child care center” mean those terms as defined in section 1 of ~~Act No. 116 of the Public Acts of 1973, being section 722.111 of the Michigan Compiled Laws 1973 PA 116, MCL 722.111.~~

**(C) “CIGAR BAR” MEANS AN ESTABLISHMENT OR AREA WITHIN AN ESTABLISHMENT THAT IS OPEN TO THE PUBLIC AND IS DESIGNATED FOR THE SMOKING OF TOBACCO PRODUCTS, PURCHASED ON THE PREMISES OR ELSEWHERE.**

~~(D) (b)~~—“County medical care facility” means that term as defined in section 20104.

~~(E) (c)~~—“Educational facility” means a building owned, leased, or under the control of a public or private school system, college, or university.

~~(F) (d)~~—“Food service establishment” means a food service establishment as defined in section ~~1290~~**12905**.

~~(G) (e)~~—“Health facility” means a health facility or agency licensed under article 17, except a home for the aged, nursing home, county medical care facility, hospice, or hospital long-term care unit.

~~(H) (f)~~—“Home for the aged” means that term as defined in section 20106.

~~(I) (g)~~—“Hospice” means that term as defined in section 20106.

~~(J) (h)~~—“Hospital long-term care unit” means that term as defined in section 20106.

**(K) “LICENSED BINGO EVENT OR MILLIONAIRE PARTY” MEANS A BINGO EVENT OR MILLIONAIRE PARTY CONDUCTED BY A LICENSEE UNDER THE TRAXLER-MCCAULEY-LAW-BOWMAN BINGO ACT, 1972 PA 382, MCL 432.101 TO 432.120.**

~~(L) (i)~~—“Licensed premises” means any portion of a building, structure, room, or enclosure in which alcoholic liquor may be sold for consumption on the premises pursuant to a license issued by the Michigan liquor control commission.

~~(M) (j)~~—“Meeting” means a meeting as defined in section 2 of the open meetings act, ~~Act No. 267 of the Public Acts of 1976, being section 15.262 of the Michigan Compiled Laws 1976 PA 267, MCL 15.262.~~

**(N) “MOTOR VEHICLE” MEANS THAT TERM AS DEFINED IN SECTION 33 OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.33.**

~~(O) (k)~~—“Nursing home” means that term as defined in section 20109.

**(P) “ON PREMISES LICENSE” MEANS AN ON PREMISES LICENSE ISSUED UNDER THE MICHIGAN LIQUOR CONTROL CODE OF 1998, 1998 PA 58, MCL 436.1101 TO 436.2303.**

**(Q) “PLACE OF EMPLOYMENT” MEANS AN ENCLOSED INDOOR AREA THAT CONTAINS 1 OR MORE WORK AREAS FOR 1 OR MORE PERSONS EMPLOYED BY A PUBLIC OR PRIVATE EMPLOYER. PLACE OF EMPLOYMENT DOES NOT INCLUDE ANY OF THE FOLLOWING:**

**(i) A STRUCTURE USED PRIMARILY AS THE RESIDENCE OF THE OWNER OR LESSEE THAT IS ALSO USED AS AN OFFICE FOR THE OWNER OR LESSEE.**

**(ii) A FOOD SERVICE ESTABLISHMENT THAT IS SUBJECT TO SECTION 12905.**

**(iii) AN ESTABLISHMENT FOR WHICH A CERTIFICATE ALLOWING SMOKING HAS BEEN OBTAINED AND IS CURRENTLY VALID UNDER SECTION 12603A.**

**(iv) A MOTOR VEHICLE.**

~~(R) (t)~~—“Public body” means a public body as defined in section 2 of the open meetings act, ~~Act No. 267 of the Public Acts of 1976 1976 PA 267, MCL 15.262.~~

~~(S) (m)~~—“Public place”, except as otherwise provided in subsection (2), means ~~both~~ **ANY** of the following:

~~(i) An enclosed, indoor area owned or operated by a state or local governmental agency and used by the general public or serving as a place of work for public employees or a meeting place for a public body, including an office, educational facility, home for the aged, nursing home, county medical care facility, hospice, hospital long-term care unit, auditorium, arena, meeting room, or public conveyance.~~

~~(ii) An enclosed, indoor area which~~ **THAT** is not owned or operated by a state or local governmental agency, is used by the general public, and is ~~+~~ **ANY** of the following:

(A) An educational facility.

(B) A home for the aged, nursing home, county medical care facility, hospice, or hospital long-term care unit.

(C) An auditorium.

(D) An arena.

(E) A theater.

(F) A museum.

(G) A concert hall.

(H) Any other facility during the period of its use for a performance or exhibit of the arts.

**(iii) A PLACE OF EMPLOYMENT.**

~~(T) (n)~~—“Smoking” or “smoke” means the ~~carrying by a person~~ **BURNING** of a lighted cigar, cigarette, pipe, or ~~ANY other lighted smoking device~~ **MATTER OR SUBSTANCE THAT CONTAINS A TOBACCO PRODUCT.**

**(U) “SMOKING PARAPHERNALIA” MEANS ANY EQUIPMENT, APPARATUS, OR FURNISHING THAT IS USED IN OR NECESSARY FOR THE ACTIVITY OF SMOKING.**

**(V) “TOBACCO PRODUCT” MEANS A PRODUCT THAT CONTAINS TOBACCO AND IS INTENDED FOR HUMAN CONSUMPTION, INCLUDING, BUT NOT LIMITED TO, CIGARETTES, NONCIGARETTE SMOKING**

**TOBACCO, OR SMOKELESS TOBACCO, AS THOSE TERMS ARE DEFINED IN SECTION 2 OF THE TOBACCO PRODUCTS TAX ACT, 1993 PA 327, MCL 205.422, AND CIGARS.**

**(W) "TOBACCO SPECIALTY RETAIL STORE" MEANS AN ESTABLISHMENT THAT IS NOT REQUIRED TO BE LICENSED AS A FOOD SERVICE ESTABLISHMENT, IN WHICH THE PRIMARY PURPOSE IS THE RETAIL SALE OF TOBACCO PRODUCTS AND SMOKING PARAPHERNALIA, AND IN WHICH THE SALE OF OTHER PRODUCTS IS INCIDENTAL.**

**(X) "WORK AREA" MEANS A SITE WITHIN A PLACE OF EMPLOYMENT AT WHICH 1 OR MORE EMPLOYEES PERFORM SERVICES FOR AN EMPLOYER.**

~~(2) Public place does not include a private, enclosed room or office occupied exclusively by a smoker, even if the room or enclosed office may be visited by a nonsmoker.~~ **MOTOR VEHICLE.**

(3) In addition, article 1 contains general definitions and principles of construction applicable to all articles of this code.

~~Sec. 12603. (1) Except as otherwise provided by law IN SECTION 12603A, A STATE OR LOCAL GOVERNMENTAL AGENCY OR THE PERSON WHO OWNS OR OPERATES A PUBLIC PLACE SHALL NOT ALLOW SMOKING IN THE PUBLIC PLACE, AND an individual shall not smoke in a public place or at a meeting of a public body. ; except in a designated smoking area.~~

~~—(2) This section does not apply to a room, hall, or building used for a private function if the seating arrangements are under the control of the sponsor of the function and not under the control of the state or local governmental agency or the person who owns or operates the room, hall, or building.~~

~~—(3) This section does not apply to a food service establishment or to licensed premises.~~

~~—(4) This section shall not apply to a private educational facility after regularly scheduled school hours.~~

**(2) "NO SMOKING" SIGNS OR THE INTERNATIONAL "NO SMOKING" SYMBOL SHALL BE CLEARLY AND CONSPICUOUSLY POSTED AT THE ENTRANCES TO AND IN EVERY BUILDING OR OTHER AREA WHERE SMOKING IS PROHIBITED UNDER THIS SECTION. THE OWNER, OPERATOR, MANAGER, OR PERSON HAVING CONTROL OF THE BUILDING OR OTHER AREA SHALL POST THE SIGNS. THE OWNER, OPERATOR, MANAGER, OR PERSON HAVING CONTROL OF THE AREA SHALL REMOVE ALL ASHTRAYS AND OTHER SMOKING PARAPHERNALIA FROM ANYWHERE SMOKING IS PROHIBITED UNDER THIS SECTION. THE OWNER, OPERATOR, MANAGER, OR PERSON HAVING CONTROL OF THE AREA SHALL INFORM PERSONS SMOKING IN VIOLATION OF THIS ACT THAT THEY ARE IN VIOLATION OF STATE LAW AND SUBJECT TO PENALTIES.**

**SEC. 12603A. (1) THE OWNER OR OPERATOR OF AN ESTABLISHMENT THAT IS DESCRIBED IN AND, IF APPLICABLE, MEETS THE REQUIREMENTS OF SUBSECTION (5) MAY APPLY ANNUALLY TO THE DEPARTMENT FOR A CERTIFICATE ALLOWING SMOKING IN THE ESTABLISHMENT. AN APPLICATION UNDER THIS SUBSECTION SHALL BE MADE IN THE FORM PRESCRIBED BY THE DEPARTMENT, BE ACCOMPANIED BY AN ANNUAL FEE OF \$250.00, AND BE ACCOMPANIED BY THE DOCUMENTATION REQUIRED BY THE DEPARTMENT TO VERIFY THAT THE ESTABLISHMENT MEETS THE REQUIREMENTS OF SUBSECTION (5), AS APPLICABLE. A CERTIFICATE ISSUED UNDER THIS SECTION IS ONLY VALID FOR 1 YEAR. THE DEPARTMENT SHALL TRANSMIT ALL FEES COLLECTED UNDER THIS SUBSECTION TO THE STATE TREASURER FOR DEPOSIT INTO THE CHILDREN'S TRUST FUND CREATED UNDER 1982 PA 249, MCL 21.171 TO 21.172.**

**(2) IF THE ESTABLISHMENT MEETS THE REQUIREMENTS OF SUBSECTION (5), AS APPLICABLE, AND HAS PAID THE FEE REQUIRED UNDER SUBSECTION (1), THE DEPARTMENT SHALL APPROVE AN APPLICATION UNDER SUBSECTION (1) AND, ON OR BEFORE THE EXPIRATION OF 7 CALENDAR DAYS AFTER RECEIPT OF THE APPLICATION, SHALL ISSUE THE OWNER OR OPERATOR OF THE ESTABLISHMENT A CERTIFICATE ALLOWING SMOKING IN THE ESTABLISHMENT. THE CERTIFICATE SHALL BE PRINTED IN 36-POINT TYPE. THE OWNER OR OPERATOR OF THE ESTABLISHMENT SHALL POST THE CERTIFICATE CLEARLY AND CONSPICUOUSLY AT THE ENTRANCES TO THE ESTABLISHMENT WHERE SMOKING IS ALLOWED UNDER THIS SECTION.**

**(3) AN OWNER OR OPERATOR OF AN ESTABLISHMENT WHO IS ISSUED A CERTIFICATE UNDER SUBSECTION (2) MAY ALLOW SMOKING IN THE ESTABLISHMENT. AN OWNER OR OPERATOR OF AN ESTABLISHMENT WHO IS ISSUED A CERTIFICATE UNDER SUBSECTION (2) SHALL COMPLY WITH THIS SECTION.**

**(4) AN ESTABLISHMENT THAT HAS OBTAINED A CERTIFICATE UNDER SUBSECTION (2), IS A FOOD SERVICE ESTABLISHMENT, AND HAS A SEATING CAPACITY OF FEWER THAN 50 MAY DESIGNATE UP TO 75% OF ITS SEATING CAPACITY AS SEATING FOR SMOKERS. AN ESTABLISHMENT THAT HAS OBTAINED A CERTIFICATE UNDER SUBSECTION (2), IS A FOOD SERVICE ESTABLISHMENT, AND HAS A SEATING CAPACITY OF 50 OR MORE MAY DESIGNATE UP TO 50% OF ITS SEATING CAPACITY AS SEATING FOR SMOKERS. A FOOD SERVICE ESTABLISHMENT THAT DESIGNATES SEATING FOR SMOKERS UNDER THIS SUBSECTION SHALL CLEARLY IDENTIFY THE SEATS FOR NONSMOKERS AS NONSMOKING, PLACE THE SEATS FOR NONSMOKERS IN CLOSE PROXIMITY TO EACH OTHER, AND**



**LOCATE THE SEATS FOR NONSMOKERS SO AS NOT TO DISCRIMINATE AGAINST NONSMOKERS. A FOOD SERVICE ESTABLISHMENT SHALL NOT USE THE DEFINITION OF SEATING CAPACITY AND THE EXEMPTION FROM THAT DEFINITION SET FORTH IN THIS SUBSECTION TO INCREASE THE AMOUNT OF SEATING FOR SMOKERS ABOVE 75%. AS USED IN THIS SUBSECTION, "SEATING CAPACITY" MEANS THE ACTUAL NUMBER OF SEATS FOR PATRONS IN A FOOD SERVICE ESTABLISHMENT. SEATING CAPACITY DOES NOT INCLUDE SEATS LOCATED AT A BAR OR SEATS AT TABLES THAT ARE LOCATED ADJACENT TO A BAR, IF MEALS ARE NOT SERVED AT THOSE TABLES.**

**(5) THE OWNER OR OPERATOR OF AN ESTABLISHMENT DESCRIBED AS FOLLOWS MAY APPLY ANNUALLY FOR A CERTIFICATE TO ALLOW SMOKING IN THE ESTABLISHMENT UNDER SUBSECTION (1):**

**(A) A CIGAR BAR THAT MEETS ALL OF THE FOLLOWING REQUIREMENTS:**

**(i) IN THE 30-DAY PERIOD IMMEDIATELY PRECEDING THE FILING OF THE FIRST APPLICATION UNDER SUBSECTION (1), GENERATED 10% OR MORE OF ITS TOTAL GROSS ANNUAL INCOME FROM THE ON-SITE SALE OF TOBACCO PRODUCTS AND THE RENTAL OF ON-SITE HUMIDORS, NOT INCLUDING ANY SALES OF TOBACCO PRODUCTS FROM VENDING MACHINES.**

**(ii) FOR EACH CALENDAR YEAR AFTER THE CALENDAR YEAR IN WHICH THE FIRST APPLICATION WAS FILED UNDER SUBSECTION (1), GENERATES 10% OR MORE OF ITS TOTAL GROSS ANNUAL INCOME FROM THE ON-SITE SALE OF TOBACCO PRODUCTS AND THE RENTAL OF ON-SITE HUMIDORS, NOT INCLUDING ANY SALES OF TOBACCO PRODUCTS FROM VENDING MACHINES.**

**(iii) IS LOCATED ON PREMISES THAT ARE PHYSICALLY SEPARATED FROM ANY AREAS OF THE SAME OR ADJACENT ESTABLISHMENT IN WHICH SMOKING IS PROHIBITED UNDER THIS PART OR PART 129 AND WHERE SMOKE DOES NOT INFILTRATE INTO THOSE NONSMOKING AREAS. AS USED IN THIS SUBPARAGRAPH, "PHYSICALLY SEPARATED" MEANS AN AREA THAT IS ENCLOSED ON ALL SIDES BY ANY COMBINATION OF SOLID WALLS, WINDOWS, OR DOORS THAT EXTEND FROM THE FLOOR TO CEILING.**

**(iv) HAS INSTALLED ON ITS PREMISES AN ON-SITE HUMIDOR.**

**(v) PROHIBITS ENTRY TO A PERSON UNDER THE AGE OF 18 DURING THE TIME THE CIGAR BAR IS OPEN FOR BUSINESS.**

**(B) A TOBACCO SPECIALTY RETAIL STORE THAT MEETS ALL OF THE FOLLOWING REQUIREMENTS:**

**(i) IN THE 30-DAY PERIOD IMMEDIATELY PRECEDING THE FILING OF THE FIRST APPLICATION UNDER SUBSECTION (1), GENERATED 75% OR MORE OF ITS TOTAL GROSS ANNUAL INCOME FROM THE ON-SITE SALE OF TOBACCO PRODUCTS AND SMOKING PARAPHERNALIA.**

**(ii) FOR EACH CALENDAR YEAR AFTER THE CALENDAR YEAR IN WHICH THE FIRST APPLICATION WAS FILED UNDER SUBSECTION (1), GENERATES 75% OR MORE OF ITS TOTAL GROSS ANNUAL INCOME FROM THE ON-SITE SALE OF TOBACCO PRODUCTS AND SMOKING PARAPHERNALIA.**

**(iii) IS LOCATED ON PREMISES THAT ARE PHYSICALLY SEPARATED FROM ANY AREAS OF THE SAME OR ADJACENT ESTABLISHMENTS IN WHICH SMOKING IS PROHIBITED UNDER THIS PART OR PART 129 AND WHERE SMOKE DOES NOT INFILTRATE INTO THOSE NONSMOKING AREAS. AS USED IN THIS SUBPARAGRAPH, "PHYSICALLY SEPARATED" MEANS AN AREA THAT IS ENCLOSED ON ALL SIDES BY ANY COMBINATION OF SOLID WALLS, WINDOWS, OR DOORS THAT EXTEND FROM THE FLOOR TO CEILING.**

**(iv) PROHIBITS ENTRY TO A PERSON UNDER THE AGE OF 18 DURING THE TIME THE TOBACCO SPECIALTY RETAIL STORE IS OPEN FOR BUSINESS.**

**(C) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION, A CASINO. A CERTIFICATE ISSUED UNDER THIS SECTION SHALL ONLY ALLOW SMOKING ON THE FLOOR SPACE OF THE CASINO WHERE GAMBLING GAMES ARE CONDUCTED OR PLAYED. DETERMINATION OF WHAT CONSTITUTES FLOOR SPACE SHALL BE MADE IN A MANNER ACCEPTABLE TO THE DEPARTMENT OR TO THE LOCAL HEALTH DEPARTMENT AUTHORIZED TO ENFORCE THIS PART, AS PROVIDED IN RULES PROMULGATED BY THE DEPARTMENT. HOWEVER, THE DEPARTMENT SHALL NOT ISSUE A CERTIFICATE UNDER SUBSECTION (1) TO A CASINO AND SMOKING IS PROHIBITED ON THE FLOOR SPACE OF A CASINO WHERE GAMBLING GAMES ARE CONDUCTED OR PLAYED UNDER EITHER OR BOTH OF THE FOLLOWING CIRCUMSTANCES:**

**(i) THIS STATE NEGOTIATES AN AGREEMENT WITH THE FEDERALLY RECOGNIZED INDIAN TRIBES THAT CONDUCT GAMBLING GAMES IN THIS STATE TO PROHIBIT SMOKING IN AREAS WHERE GAMBLING GAMES ARE CONDUCTED PURSUANT TO AN INDIAN GAMING COMPACT OR OTHER APPROPRIATE AGREEMENT.**

**(ii) A MAJORITY OF FEDERALLY RECOGNIZED INDIAN TRIBES THAT CONDUCT GAMBLING GAMES IN THIS STATE VOLUNTARILY PROHIBIT SMOKING IN AREAS OF THE TRIBAL CASINOS WHERE**

**GAMBLING GAMES ARE CONDUCTED OR PLAYED, AS DETERMINED BY THE RECORDS OF THE MICHIGAN GAMING CONTROL BOARD.**

**(D) AN ESTABLISHMENT THAT HOLDS AN ON PREMISES LICENSE.**

**(E) AN ESTABLISHMENT AT WHICH A LICENSED BINGO EVENT OR MILLIONAIRE PARTY IS CONDUCTED.**

**(F) THE NON-FOOD-SERVICE-ESTABLISHMENT PORTION OF THE PREMISES OF A LICENSEE UNDER THE HORSE RACING LAW OF 1995, 1995 PA 279, MCL 431.301 TO 431.336.**

**(G) AN ESTABLISHMENT OPERATED BY AN ORGANIZATION OF THE VETERANS OF FOREIGN WARS, THE AMERICAN LEGION, OR ANY OTHER WAR VETERANS' ORGANIZATION IF THE ESTABLISHMENT PROHIBITS ENTRY TO INDIVIDUALS, INCLUDING EMPLOYEES OF THE ESTABLISHMENT, WHO ARE UNDER THE AGE OF 18 DURING THE TIME THE ESTABLISHMENT IS OPEN FOR BUSINESS.**

**(H) AN ESTABLISHMENT OPERATED BY A FRATERNAL ORGANIZATION, PRIVATE CLUB, BANQUET FACILITY, OR OTHER ORGANIZATION IF THE ESTABLISHMENT IS NOT IN FACT OPEN TO THE PUBLIC.**

**SEC. 12610. NOTWITHSTANDING SECTION 12609 OR ANY OTHER PROVISION OF THIS ACT TO THE CONTRARY, THE DEPARTMENT SHALL NOT PROMULGATE RULES TO IMPLEMENT OR ADMINISTER THE PROVISIONS OF THIS PART THAT WERE ADDED BY THE AMENDATORY ACT THAT ADDED THIS SECTION.**

Sec. 12611. A person who ~~violates section 12603(1) or 12604a or a person or state or local governmental agency that owns or operates a public place and that violates section 12605 or 12607~~ **THIS PART** shall be directed to comply with this part and is subject to a civil fine of not more than \$100.00 for a first violation and not more than \$500.00 for a second or subsequent violation.

Sec. 12613. (1) Subject to subsection (2), the department shall enforce this part and **ANY** rules promulgated under this part pursuant to sections 2262(2) and 2263. In addition to the civil fine authorized under section 12611, the department may enforce this part and ~~the ANY~~ rules promulgated under this part through an action commenced pursuant to section 2255 or any other appropriate action authorized by law.

(2) Pursuant to section 2235, the department may authorize a local health department to enforce this part and ~~the ANY~~ rules promulgated under this part. A local health department authorized to enforce this part and ~~the ANY~~ rules promulgated under this part shall enforce this part and ~~the ANY~~ rules promulgated under this part pursuant to sections 2461(2) and 2462. In addition to the civil fine authorized under section 12611, a local health department may enforce this part and ~~the ANY~~ rules promulgated under this part through an action commenced pursuant to section 2465 or any other appropriate action authorized by law.

(3) In addition to any other enforcement action authorized by law, a person alleging a violation of this part may bring a civil action for appropriate injunctive relief, if the person has used the public place, child caring institution, **OR** child care center, health facility, or private practice office of an individual who is licensed under article 15 within 60 days after **BEFORE** the civil action is filed.

(4) The remedies under this part are independent and cumulative. The use of 1 remedy by a person shall not bar the use of other lawful remedies by that person or the use of a lawful remedy by another person.

Sec. 12614. (1) The director shall report biennially to the legislature on the effect and enforcement of this part. The report shall include, at a minimum, ~~both of the following:~~

—(a) ~~The policy of each state agency that has developed a policy for the separation of smokers and nonsmokers.~~

—(b) ~~Compliance~~ **COMPLIANCE** with section ~~12607-12603~~ **12603 AND SECTION 12603A.**

(2) Upon request of the department, the director of the department of management and budget annually shall report to the department, at a minimum, ~~all of the following:~~

—(a) ~~A~~ **A** list of each public place owned or operated by the state :

—(b) ~~Compliance~~ **AND ITS COMPLIANCE** with section ~~12607-12603~~ **12603 AND SECTION 12603A.**

—(c) ~~The smoking policy, if any, adopted by each public place listed under subdivision (a):~~

**PART 129. FOOD SERVICE SANITATION-SMOKE-FREE FOOD SERVICE ESTABLISHMENTS**

Sec. 12905. (1) ~~Except as otherwise provided in this section, all public areas of a~~ **A** food service establishment shall be nonsmoking **NOT ALLOW SMOKING, AND AN INDIVIDUAL SHALL NOT SMOKE IN A FOOD SERVICE ESTABLISHMENT.** As used in this subsection, "public area" includes, but is not limited to, a bathroom, a coatroom, and an entrance or other area used by a patron when not seated at a food service table or counter. Public area does not include the lobby, waiting room, hallways, and lounge areas of a food service establishment, but these areas are not required to be designated as smoking areas.

—(2) Subject to subsection (3), a food service establishment with a seating capacity of fewer than 50, whether or not it is owned and operated by a private club, and a food service establishment that is owned and operated by a private club may designate up to 75% of its seating capacity as seating for smokers. A food service establishment with a seating

capacity of 50 or more that is not owned or operated by a private club may designate up to 50% of its seating capacity as seating for smokers. A food service establishment that designates seating for smokers shall clearly identify the seats for nonsmokers as nonsmoking, place the seats for nonsmokers in close proximity to each other, and locate the seats for nonsmokers so as not to discriminate against nonsmokers.

~~—(3) A food service establishment shall not use the definition of seating capacity and the exemption from that definition set forth in subsection (9)(c) to increase the amount of seating for smokers above 75%.~~

~~(2) (4) In addition to a food service establishment that provides its own seating, subsections (1), (2), and (3) also apply~~  
**SUBSECTION (1) APPLIES** to a food service establishment or group of food service establishments that are located in a shopping mall ~~where~~**IN WHICH** the seating for the food service establishment or group of food service establishments is provided or maintained, or both, by the person who owns or operates the shopping mall. ~~As used in this subsection, “shopping mall” means a shopping center with stores facing an enclosed mall.~~

~~(3) (5) The director, an authorized representative of the director, or a representative of a local health department to which the director has delegated responsibility for enforcement of this part shall, in accordance with R 325.25902 of the Michigan administrative code, inspect each food service establishment that is subject to this section. The inspecting entity shall determine compliance with this section during each inspection.~~

~~(4) (6) The department or a local health department shall utilize compliance or~~  
**NOTIFY THE DEPARTMENT OF AGRICULTURE OF ANY** noncompliance with this section or with rules promulgated to implement this section. **THE DEPARTMENT OF AGRICULTURE MAY USE COMPLIANCE OR NONCOMPLIANCE WITH THIS SECTION OR ANY RULES PROMULGATED TO IMPLEMENT THIS SECTION** as criteria in the determination of whether to deny, suspend, limit, or revoke a license pursuant to section 12907(1)**ISSUED UNDER THE FOOD LAW OF 2000, 2000 PA 92, MCL 289.1101 TO 289.8111.**

~~(5) (7) Within 5 days after receipt of a written complaint of violation of this section, a local health department shall investigate the complaint to determine compliance. If a violation of this section is identified and not corrected as ordered by the local health department within 2 days after receipt of the order by the food service establishment, the local health officer may issue an order to cease food service operations until compliance with this section is achieved.~~

~~—(8) This section does not apply to a private facility that is serviced by a catering kitchen or to a separate room in a food service establishment that is used for private banquets. This section does not apply to a food service establishment that is owned and operated by a fraternal organization, if service is limited to members of the fraternal organization and their guests.~~

**(6) “NO SMOKING” SIGNS OR THE INTERNATIONAL “NO SMOKING” SYMBOL SHALL BE CLEARLY AND CONSPICUOUSLY POSTED AT THE ENTRANCE TO AND IN EVERY BUILDING OR OTHER AREA WHERE SMOKING IS PROHIBITED UNDER THIS SECTION. THE OWNER, OPERATOR, MANAGER, OR PERSON HAVING CONTROL OF THE BUILDING OR OTHER AREA SHALL POST THE SIGNS. THE OWNER, OPERATOR, MANAGER, OR PERSON HAVING CONTROL OF THE AREA SHALL REMOVE ALL ASHTRAYS AND OTHER SMOKING PARAPHERNALIA FROM ANY AREA WHERE SMOKING IS PROHIBITED UNDER THIS SECTION. THE OWNER, OPERATOR, MANAGER, OR PERSON HAVING CONTROL OF THE AREA SHALL INFORM PERSONS SMOKING IN VIOLATION OF THIS ACT THAT THEY ARE IN VIOLATION OF STATE LAW AND SUBJECT TO PENALTIES.**

~~(7) (9) As used in this section:~~

~~—(a) “Bar” means that term as defined in section 2a of the Michigan liquor control act, Act No. 8 of the Public Acts of the Extra Session of 1933, being section 436.2a of the Michigan Compiled Laws.~~

~~—(b) “Room” means an area that is physically distinct from the main dining area of a food service establishment and from which smoke cannot pass into the main dining area.~~

~~—(c) “Seating capacity” means the actual number of seats for patrons in a food service establishment. Seating capacity does not include seats located at a bar or seats at tables that are located adjacent to a bar, if meals are not served at those tables.~~

**(A) “FOOD SERVICE ESTABLISHMENT” MEANS THAT TERM AS DEFINED IN SECTION 1107 OF THE FOOD LAW OF 2000, 2000 PA 92, MCL 289.1107. FOOD SERVICE ESTABLISHMENT DOES NOT INCLUDE AN ESTABLISHMENT FOR WHICH A CERTIFICATE ALLOWING SMOKING HAS BEEN OBTAINED AND IS CURRENTLY VALID UNDER SECTION 12603A.**

**(B) “SHOPPING MALL” MEANS A SHOPPING CENTER WITH STORES FACING AN ENCLOSED MALL.**

**(C) (d) “Smoking”, means the carrying by an individual of a lighted cigar, cigarette, or other lighted smoking device “SMOKING PARAPHERNALIA”, AND “TOBACCO PRODUCT” MEAN THOSE TERMS AS DEFINED IN SECTION 12601.**

**SEC. 12914. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT TO THE CONTRARY, THE DEPARTMENT SHALL NOT PROMULGATE RULES TO IMPLEMENT OR ADMINISTER THE PROVISIONS OF THIS PART THAT WERE ADDED BY THE AMENDATORY ACT THAT ADDED THIS SECTION.**

Enacting section 1. (1) Sections 12604a, 12605, 12607, 12615, 12617, 12909, 21333, and 21733 of the public health code, 1978 PA 368, MCL 333.12604a, 333.12605, 333.12607, 333.12615, 333.12617, 333.12909, 333.21333, and 333.21733, are repealed.

(2) Section 6127 of the food law of 2000, 2000 PA 92, MCL 289.6127, is repealed.

Enacting section 2. This amendatory act takes effect August 1, 2008.”.

The motion did not prevail and the amendment was not adopted, a majority of the members serving not voting therefor.

Rep. Hoogendyk moved to amend the bill as follows:

1. Amend page 18, following line 26, by inserting:

“Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 1049 of the 94th Legislature is enacted into law.”.

The motion did not prevail and the amendment was not adopted, a majority of the members serving not voting therefor.

Rep. Hoogendyk moved to amend the bill as follows:

1. Amend page 18, following line 26, by inserting:

“Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 776 of the 94th Legislature is enacted into law.”.

The motion did not prevail and the amendment was not adopted, a majority of the members serving not voting therefor.

Rep. Robertson moved to amend the bill as follows:

1. Amend page 18, following line 26, by inserting:

“Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 1059 of the 94th Legislature is enacted into law.”.

The motion did not prevail and the amendment was not adopted, a majority of the members serving not voting therefor.

Rep. Hoogendyk moved to amend the bill as follows:

1. Amend page 18, following line 26, by inserting:

“Enacting section 2. This amendatory act does not take effect unless House Bill No. 4660 of the 94th Legislature is enacted into law.”.

The motion did not prevail and the amendment was not adopted, a majority of the members serving not voting therefor.

Rep. Hammon moved that the bill be placed on the order of Third Reading of Bills.

The motion prevailed.

Rep. Tobocman moved that the bill be placed on its immediate passage.

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

By unanimous consent the House returned to the order of

**Third Reading of Bills**

**House Bill No. 5074, entitled**

A bill to amend 1978 PA 368, entitled “Public health code,” by amending sections 12601 and 12611 (MCL 333.12601 and 333.12611), section 12601 as amended by 1988 PA 315 and section 12611 as amended by 1993 PA 217, and by adding section 12603a.

Was read a third time and passed, a majority of the members serving voting therefor, by yeas and nays, as follows:

**Roll Call No. 453**

**Yeas—65**

Acciavatti	Dean	LaJoy	Proos
Angerer	Dillon	Law, David	Robertson
Ball	Donigan	Law, Kathleen	Schuitmaker
Bauer	Ebli	LeBlanc	Scott
Bennett	Farrah	Leland	Shaffer
Bieda	Gillard	Lemmons	Sheltrown
Brandenburg	Gonzales	Lindberg	Simpson
Brown	Green	McDowell	Smith, Alma
Byrnes	Griffin	Meadows	Smith, Virgil
Byrum	Hammel	Meisner	Stakoe

Calley	Hammon	Melton	Tobocman
Cheeks	Hood	Meltzer	Vagnozzi
Clack	Hopgood	Miller	Valentine
Condino	Jackson	Moss	Warren
Constan	Johnson	Palsrok	Wojno
Corriveau	Jones, Robert	Polidori	Young
Coulouris			

### Nays—39

Agema	Hildenbrand	Meekhof	Rocca
Booher	Hoogendyk	Moolenaar	Sak
Casperson	Horn	Moore	Sheen
Caswell	Huizenga	Nitz	Spade
Caul	Hune	Nofs	Stahl
Elsenheimer	Jones, Rick	Opsommer	Steil
Emmons	Knollenberg	Palmer	Walker
Espinoza	Lahti	Pastor	Ward
Gaffney	Marleau	Pavlov	Wenke
Hansen	Mayes	Pearce	

In The Chair: Sak

The question being on agreeing to the title of the bill,

Rep. Tobocman moved to amend the title to read as follows:

A bill to amend 1978 PA 368, entitled "Public health code," by amending the heading of part 129 and sections 12601, 12603, 12611, 12613, 12614, 12905, and 12915 (MCL 333.12601, 333.12603, 333.12611, 333.12613, 333.12614, 333.12905, and 333.12915), sections 12601 and 12613 as amended by 1988 PA 315, sections 12603 and 12611 as amended by 1993 PA 217, section 12614 as added by 1988 PA 296, section 12905 as amended by 1993 PA 242, and section 12915 as amended by 1982 PA 526, and by adding sections 12606, 12606a, and 12606b; and to repeal acts and parts of acts.

The motion prevailed.

The House agreed to the title as amended.

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Rep. Clemente, under Rule 31, made the following statement:

"Mr. Speaker and members of the House:

I did not vote on Roll Call No. 453 because of a possible conflict of interest."

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Rep. Sheen, having reserved the right to explain his protest against the passage of the bill, made the following statement:

"Mr. Speaker and members of the House:

Smoking Ban No Vote HB-4163

I do not smoke and I agree that smoking is a health hazard. However, this legislation is an abridgement of private property rights and will result in more people smoking at home, exposing more children and more non-smoking spouses to secondhand smoke. That is not the desired result, but it is never the less a by-product of this legislation.

This legislation is unconstitutional in that it bans a legal product from consumption in a privately owned business, restaurant, or public place, which is a violation of business owners and citizen's constitutional right to do as they choose with their private property and personal health choices. This legislation opens the door to all kinds of other regulations

and restrictions on private property and individual health choices. Will we now regulate the amount of food a person can consume or fat content a restaurant can serve on its menu?

If this legislation is really concerned about the problem of secondhand smoke on non-smokers, it will be extremely detrimental to children, relatives, and spouses living in the home, because the only place one can smoke will be in the car, in the home, or outside.

This legislation is flawed, unconstitutional, and will reduce restaurant and bar patronage hurting business owners, because their former customers will have no where else to go but home. It will create as many problems as they purport to solve and I cannot support them.”

Rep. Agema, having reserved the right to explain his protest against the passage of the bill, made the following statement: “Mr. Speaker and members of the House:

Another billed substituted at the last minute to confuse the body of the legislature. It is not my job to tell what owners can and can not do with their property. We lose our freedoms one law at a time and our income one tax at a time. If tobacco is a legal substance, it’s legal. Why are we having this discussion in an economy that is going down the tubes with yet further restrictions on businesses. Truly our priorities are warped. We pick winners and losers and the politicians do it for their own advantage.”

Rep. Tobocman moved that the bill be given immediate effect.

The question being on the motion made by Rep. Tobocman,

Rep. Meekhof demanded the yeas and nays.

The demand was supported.

The question being on the motion made by Rep. Tobocman,

The motion did not prevail, 2/3 of the members serving not voting therefor, by yeas and nays, as follows:

#### Roll Call No. 454

#### Yeas—68

Acciavatti	Dean	Lahti	Proos
Angerer	Dillon	LaJoy	Robertson
Ball	Donigan	Law, David	Schuitmaker
Bauer	Ebli	Law, Kathleen	Scott
Bennett	Emmons	LeBlanc	Shaffer
Bieda	Espinoza	Leland	Sheltrown
Brandenburg	Farrah	Lemmons	Simpson
Brown	Gillard	Lindberg	Smith, Alma
Byrnes	Gonzales	Mayes	Smith, Virgil
Byrum	Griffin	McDowell	Spade
Calley	Hammel	Meadows	Stakoe
Cheeks	Hammon	Meisner	Tobocman
Clack	Hood	Melton	Vagnozzi
Condino	Hopgood	Meltzer	Valentine
Constan	Jackson	Miller	Warren
Corriveau	Johnson	Palsrok	Wojno
Coulouris	Jones, Robert	Polidori	Young

#### Nays—36

Agema	Hildenbrand	Moolenaar	Pearce
Booher	Hoogendyk	Moore	Rocca
Casperson	Horn	Moss	Sak
Caswell	Huizenga	Nitz	Sheen
Caul	Hune	Nofs	Stahl
Elsenheimer	Jones, Rick	Opsommer	Steil

Gaffney	Knollenberg	Palmer	Walker
Green	Marleau	Pastor	Ward
Hansen	Meekhof	Pavlov	Wenke

In The Chair: Sak

By unanimous consent the House returned to the order of  
**Motions and Resolutions**

Rep. Tobocman moved that when the House adjourns today it stand adjourned until Tuesday, June 3, at 1:30 p.m.  
 The motion prevailed.

Rep. Tobocman moved that House Committees be given leave to meet during the balance of today's session.  
 The motion prevailed.

Reps. Walker, Booher, Hansen, Moolenaar, Huizenga, Agema, Moore, Stakoe, Pastor, Brandenburg, Hoogendyk, Shaffer, LaJoy, Casperson, Polidori, Mayes, McDowell, Stahl, Pearce, Sheltroun, Accavitti, Bieda, Byrnes, Caul, Constan, Dean, Gonzales, Hammel, Hammon, Hildenbrand, Hopgood, Horn, Rick Jones, Kathleen Law, LeBlanc, Leland, Lemmons, Marleau, Nitz, Opsommer, Pavlov, Proos, Spade, Steil, Vagnozzi and Palmer offered the following resolution:

**House Resolution No. 382.**

A resolution to establish May 28, 2008, as Border Patrol Agents Day in the state of Michigan.

Whereas, On May 28, 1924, the United States Congress officially established the United States Border Patrol as part of the Immigration Bureau; and

Whereas, The initial force of about 450 officers, made up mostly of Texas Rangers and local sheriffs, has now grown to more than 16,000 well-trained agents nationwide, with over 150 agents serving in Michigan; and

Whereas, Border Patrol Agents routinely put their lives at risk while faithfully executing their duties in the service of our country and state; and

Whereas, Border Patrol Agents have succeeded in stopping terrorist attacks, drug smuggling, and helped to apprehend numerous fugitives of justice; and

Whereas, This state and nation owe a great debt of gratitude to all of our Border Patrol Agents; now, therefore, be it Resolved by the House of Representatives, That the members of this legislative body commemorate May 28, 2008, as Border Patrol Agents Day in the state of Michigan. We honor the contributions and sacrifices of all border patrol agents in helping to keep us safe and upholding the laws of our great country; and be it further

Resolved, That a copy of this resolution be transmitted to each office of the Border Patrol in the state of Michigan.

Pending the reference of the resolution to a committee,

Rep. Tobocman moved that Rule 71 be suspended and the resolution be considered at this time.

The motion prevailed, 3/5 of the members present voting therefor.

The question being on the adoption of the resolution,

The resolution was adopted.

**Announcement by the Clerk of Printing and Enrollment**

The Clerk announced that the following bills had been printed and placed upon the files of the members on Wednesday, May 28:

**House Bill No. 6182**  
**Senate Bill Nos. 1332 1333 1334 1335 1336 1337 1338 1339 1340 1341 1342 1343**

The Clerk announced that the following Senate bill had been received on Wednesday, May 28:

**Senate Bill No. 674**

**Messages from the Senate**

**House Bill No. 5476, entitled**

A bill to amend 1967 PA 281, entitled “Income tax act of 1967,” by amending section 435 (MCL 206.435), as added by 2007 PA 133.

The Senate has passed the bill, ordered that it be given immediate effect and pursuant to Joint Rule 20, inserted the full title.

The House agreed to the full title.

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

**House Bill No. 4216, entitled**

A bill to amend 1965 PA 290, entitled “Boiler act of 1965,” by amending the title and sections 2, 4, 4a, 7, 12, 14, and 24 (MCL 408.752, 408.754, 408.754a, 408.757, 408.762, 408.764, and 408.774), section 2 as amended by 2004 PA 103, sections 4 and 7 as amended by 1980 PA 274, and section 4a as amended by 2004 PA 265, and by adding sections 13a, 13b, 13c, and 13d.

The Senate has substituted (S-2) the bill.

The Senate has passed the bill as substituted (S-2), ordered that it be given immediate effect and pursuant to Joint Rule 20, inserted the full title.

The Speaker announced that pursuant to Rule 42, the bill was laid over one day.

**House Bill No. 5221, entitled**

A bill to provide for a capital outlay program; to set forth the provisions for its implementation within the budgetary process; to make appropriations for planning and construction at state institutions and the acquisition of land; to provide for the elimination of fire hazards at the institutions; to provide for certain special maintenance, remodeling, alteration, renovation, or demolition of and additions to projects at state institutions; to provide for elimination of occupational safety and health hazards at state agencies and institutions; to provide for the award of contracts; to provide for expenditures under the supervision of the director of the department of management and budget and the state administrative board; to provide for certain advances from the general fund; to prescribe powers and duties of certain state officers and agencies; to require certain reports, plans, and agreements; to provide for leases; to prescribe standards and conditions relating to the appropriations; to make appropriations for the fiscal year ending September 30, 2008; and to provide for the expenditure of the appropriations.

The Senate has amended the bill as follows:

1. Amend page 2, line 10, by striking out all of line 10 through line 6 on page 26 and inserting:

**“CAPITAL OUTLAY**

**APPROPRIATION SUMMARY**

GROSS APPROPRIATION .....	\$	183,191,300
Interdepartmental grant revenues:		
Total interdepartmental grants and intradepartmental transfers .....		0
ADJUSTED GROSS APPROPRIATION .....	\$	183,191,300
Federal revenues:		
Total federal revenues.....		162,867,600
Special revenue funds:		
Total local revenues .....		15,209,400
Total private revenues .....		0
Total other state restricted revenues .....		5,114,300
State general fund/general purpose .....	\$	0

**Sec. 102. DEPARTMENT OF TRANSPORTATION - AIRPORT IMPROVEMENT**

**PROGRAMS**

Airport safety, protection, and improvement program .....	\$	183,191,300
GROSS APPROPRIATION .....	\$	183,191,300
Appropriated from:		
Federal revenues:		
DOT, federal aviation administration .....		162,867,600
Special revenue funds:		
Local aeronautics match .....		15,209,400
State aeronautics fund .....		5,114,300
State general fund/general purpose .....	\$	0”

and adjusting all subtotals, totals, and section 201 accordingly.



2. Amend page 26, line 12, after "is" by striking out "\$68,769,100.00" and inserting "5,114,300.00".
3. Amend page 26, line 14, after "is" by striking out "\$31,234,700.00" and inserting "5,114,300.00".
4. Amend page 26, by striking out line 18 through line 25.
5. Amend page 27, line 3, by striking out "31,234,700" and inserting "5,114,300".
6. Amend page 27, line 7, by striking out all of line 7 through line 6 on page 47.
7. Amend page 48, line 22, by striking out the balance of the bill.

The Senate has passed the bill as amended and ordered that it be given immediate effect.  
The Speaker announced that pursuant to Rule 42, the bill was laid over one day.

#### **Senate Bill No. 674, entitled**

A bill to amend 1968 PA 251, entitled "Cemetery regulation act," by amending the title and sections 2, 2a, 8, 9, 10, 12, 12a, 13, 15, 16, 18, and 21 (MCL 456.522, 456.522a, 456.528, 456.529, 456.530, 456.532, 456.532a, 456.533, 456.535, 456.536, 456.538, and 456.541), the title and sections 2, 8, 9, 10, 12, 12a, 13, 15, 16, 18, and 21 as amended by 2004 PA 22 and section 2a as added by 1982 PA 132, and by adding sections 9a, 9b, and 13a; and to repeal acts and parts of acts.

The Senate has passed the bill.

The bill was read a first time by its title and referred to the Committee on Regulatory Reform.

### **Introduction of Bills**

Reps. Young and Condino introduced

#### **House Bill No. 6183, entitled**

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," (MCL 760.1 to 777.69) by adding section 7 to chapter III.

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

Reps. Hammel, Meadows, Palsrok, Brandenburg, Miller, Gonzales, Clack, Calley, Sheltroun, Valentine, Kathleen Law, Simpson, LeBlanc, Byrnes and Hammon introduced

#### **House Bill No. 6184, entitled**

A bill to amend 1966 PA 331, entitled "Community college act of 1966," (MCL 389.1 to 389.195) by amending the title, as amended by 1998 PA 153, and by adding chapter 13 to part 2.

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

Reps. Hammel, Meadows, Palsrok, Brandenburg, Miller, Gonzales, Clack, Calley, Sheltroun, Valentine, Kathleen Law, Simpson, LeBlanc, Byrnes and Hammon introduced

#### **House Bill No. 6185, entitled**

A bill to amend 1967 PA 281, entitled "Income tax act of 1967," by amending sections 351, 355, and 365 (MCL 206.351, 206.355, and 206.365), section 351 as amended by 2003 PA 22, section 355 as amended by 2003 PA 48, and section 365 as amended by 2003 PA 47, and by adding section 366.

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

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Rep. Hoogendyk moved that the House adjourn.  
The motion prevailed, the time being 1:20 p.m.

The Speaker Pro Tempore declared the House adjourned until Tuesday, June 3, at 1:30 p.m.

