

OHIO

SENATE

JOURNAL

TUESDAY, APRIL 26, 2005

FORTY-FOURTH DAY
Senate Chamber, Columbus, Ohio
Tuesday, April 26, 2005, 1:30 p.m.

The Senate met pursuant to adjournment.

Prayer was offered by Pastor Pamela Hairston, Rainbow Covenant Ministries, Columbus, Ohio, followed by the Pledge of Allegiance to the Flag.

The journal of the last legislative day was read and approved.

**REPORTS OF REFERENCE AND BILLS FOR SECOND
CONSIDERATION**

Senator Schuring reports for the Standing Committee on Reference, recommending that the following bills, standing in order for second consideration, be referred to committee as recommended:

Sub. H. B. No. 2-Representatives Widowfield, Buehrer, Flowers, Walcher, Hartnett, Mitchell, Uecker, Carmichael, Book, D. Stewart, Aslanides, Beatty, Blasdel, Blessing, Brown, Calvert, Carano, Cassell, Chandler, Coley, Collier, Combs, Core, Daniels, DeWine, Distel, Dolan, Domenick, C. Evans, D. Evans, Faber, Fende, Garrison, Gibbs, Gilb, Hagan, Harwood, Hoops, Hughes, Kearns, Key, Kilbane, Koziura, Latta, Law, Martin, Mason, Miller, Oelslager, Otterman, T. Patton, Perry, Peterson, Raga, Raussen, Reidelbach, Reinhard, Schaffer, Schlichter, Schneider, Seaver, Seitz, Setzer, J. Stewart, Strahorn, Taylor, Trakas, Ujvagi, Wagner, Wagoner, Webster, White, Widener, Willamowski, Williams, Wolpert, Yuko.

To amend sections 5101.184, 5747.026, 5747.08, and 5747.113 and to enact section 5903.21 of the Revised Code to grant to all members of the National Guard and reserve components of the United States armed forces who have been called to active duty an extension of time in which to file income tax returns and pay income taxes, to increase the number of authorized participants in the Ohio National Guard Scholarship Program for the 2005 summer term, to allow taxpayers to donate a portion of their Ohio income tax refund to injured military personnel, and to declare an emergency.

To the Committee on Finance and Financial Institutions.

Sub. H. B. No. 50-Representatives Setzer, Hughes, C. Evans, DeWine, Gilb, McGregor, Fessler, Latta, Walcher, D. Evans, Willamowski, Seaver, Perry, Allen, Buehrer, Calvert, Carmichael, Cassell, Chandler, Collier, Combs, Daniels, DeBose, Domenick, Faber, Gibbs, Hagan, Harwood, Kearns, Kilbane, Law, Martin, Otterman, T. Patton, Peterson, Raga, Reidelbach, Schaffer, Schlichter, Schneider, D. Stewart, J. Stewart, Strahorn, Taylor,

Uecker, Webster, Widener, Widowfield, Williams, Yuko.

To amend section 2907.09 of the Revised Code to expand and modify the penalty for the offense of public indecency.

To the Committee on Judiciary - Criminal Justice.

S. B. No. 128-Senator Cates.

To amend section 2301.02 of the Revised Code to add one additional judge for the general division of the Butler County Court of Common Pleas to be elected in 2006.

To the Committee on Judiciary - Civil Justice.

S. B. No. 129-Senators Schuring, Fedor, Gardner, Spada, Prentiss, Mallory, Armbruster, Brady, Dann, Fingerhut, Hagan, Miller, Mumper, Roberts, Wilson, Zurz, Austria.

To amend sections 3314.013 and 3314.17 and to enact section 3314.18 of the Revised Code to extend the statewide cap on the number of community schools sponsored by entities other than the school districts in which they would be located, to create the Joint Study Committee on Ohio's Community Schools, and to make changes to the Community Schools Law.

To the Committee on Education.

S. B. No. 130-Senators Jacobson, Jordan, Cates, Amstutz, Mumper, Wachtmann, Padgett, Clancy, Austria, Hottinger.

To amend sections 2133.08, 2133.09, and 2133.15 of the Revised Code to provide that if the guardian, spouse, adult children, parents, adult sibling, or majority of the adult siblings of an adult patient in a permanently unconscious state disagree with a consent to the withholding or withdrawal of nutrition and hydration in connection with the patient and present some evidence that the decision is not consistent with the previously expressed intention of the patient the court must prohibit the attending physician from withholding or withdrawing nutrition and hydration in connection with the patient, to provide that if less than a majority of such a patient's adult siblings, the patient's grandparents, the nearest adult who is related to the patient by blood or adoption or, in certain circumstances, the guardian, spouse, adult children, parents, adult sibling, or majority of adult siblings of the patient disagrees with a decision of the priority individual to consent to the withholding or

withdrawal of nutrition and hydration of such a patient, the court must appoint a physician to examine the patient and may only consider the determination of that physician and the physicians hired by either party if applicable in determining whether nutrition and hydration should be withdrawn or withheld, to include the patient's grandparents in the list of priority individuals who may consent to withhold or withdraw life-sustaining treatment, and to allow the attorney general or the prosecuting attorney to file an action or intervene to present evidence and argue that a decision to withhold or withdraw life-sustaining treatment or nutrition and hydration is not consistent with the law.

To the Committee on Judiciary - Civil Justice.

S. B. No. 131-Senators Mumper, Dann, Zurz.

To amend sections 4301.333, 4301.334, 4301.351, 4301.354, 4301.355, 4301.356, 4301.361, 4301.364, 4301.365, 4301.366, 4301.62, 4301.99, and 4303.182 and to enact section 4301.65 of the Revised Code to authorize certain Sunday liquor sales to begin at 11 a.m. even if these sales previously were approved by the voters to commence at 1 p.m., to change from 1 p.m. to 11 a.m. the time at which Sunday liquor sales may start as specified in certain local option questions submitted to the voters, to prohibit the sale, offering for sale, purchase, and use of alcohol vaporizing devices, and to allow opened bottles of wine that are purchased at restaurants to be transported in vehicles under certain conditions.

To the Committee on Agriculture.

S. B. No. 132-Senators Coughlin, Clancy, Goodman.

To amend section 2903.13 of the Revised Code to increase the penalty for assaults on sports officials and health care professionals and health care workers providing health care services in a health care facility or location.

To the Committee on Judiciary - Criminal Justice.

YES - 5: J. KIRK SCHURING, MARK MALLORY, C. J. PRENTISS, BILL HARRIS, JEFF JACOBSON.

NO - 0.

The question being, "Shall the report of the committee be accepted?"

The report of the committee was accepted.

Said bills were considered a second time and referred to committee as recommended.

REPORTS OF STANDING AND SELECT COMMITTEES

Senator Coughlin submitted the following report:

The standing committee on State and Local Government and Veterans' Affairs, to which was referred **S. B. No. 119**-Senator Hagan, et al., having had the same under consideration, reports it back with the following amendments and recommends its passage when so amended.

In lines 76, 101, and 126, after "appointed" insert " solely "

YES - 7: LARRY A. MUMPER, TERESA FEDOR, KEVIN J. COUGHLIN, TOM NIEHAUS, JEFFRY J. ARMBRUSTER, J. KIRK SCHURING, KIMBERLY A. ZURZ.

NO - 1: DANIEL R. BRADY.

The question being, "Shall the report of the committee be accepted?"

The report of the committee was accepted.

Senator Coughlin submitted the following report:

The standing committee on State and Local Government and Veterans' Affairs, to which was referred **S. B. No. 124**-Senator Spada, having had the same under consideration, reports it back with the following amendments and recommends its passage when so amended.

In line 4094, delete "101.82,"

In line 4097, delete "2323.44,"

YES - 8: KIMBERLY A. ZURZ, TERESA FEDOR, LARRY A. MUMPER, KEVIN J. COUGHLIN, TOM NIEHAUS, J. KIRK SCHURING, JEFFRY J. ARMBRUSTER, DANIEL R. BRADY.

NO - 0.

The question being, "Shall the report of the committee be accepted?"

The report of the committee was accepted.

Senator Goodman submitted the following report:

The standing committee on Judiciary - Civil Justice, to which was referred **Sub. H. B. No. 25**-Representative Wagner, et al., having had the same under consideration, reports back a substitute bill and recommends its passage.

YES - 8: DAVID GOODMAN, STEPHEN C. AUSTRIA, ROBERT L. SCHULER, ERIC D. FINGERHUT, LYNN R. WACHTMANN, JAY HOTTINGER, KIMBERLY A. ZURZ, RON AMSTUTZ.

NO - 1: MARC DANN.

The question being, "Shall the report of the committee be accepted?"

The report of the committee was accepted.

Senator Schuring submitted the following report:

The standing committee on Rules to which were referred the appointments by the Governor of:

Dawn Gleason, Democrat, from Columbus, Franklin County, Ohio, as a Member of the Board of Speech Language Pathology and Audiology for a term beginning March 18, 2005 and ending at the close of business September 26, 2005, replacing Debra Abel, who resigned.

James J. Mermis, Republican, from Columbus, Franklin County, Ohio, as a Member of the Ohio Board of Dietetics for a term beginning March 11, 2005 and ending at the close of business June 30, 2009, replacing Jonathan S. Hughes, who resigned.

Judy J. Tolles, Republican, from Perrysburg, Wood County, Ohio, as a Member of the Board of Nursing for a term beginning March 11, 2005 and ending at the close of business December 31, 2005, replacing T. Diann Caudill, who resigned.

Having had the same under consideration, reports back the recommendation that the Senate advise and consent to said appointments.

YES - 11: BILL HARRIS, JEFF JACOBSON, RANDY GARDNER, ROBERT F. SPADA, STEPHEN C. AUSTRIA, JAY HOTTINGER, J. KIRK SCHURING, ROBERT F. HAGAN, TERESA FEDOR, MARK MALLORY, C. J. PRENTISS.

NO - 0.

The question being, "Shall the Senate advise and consent to the appointments by the Governor?"

The yeas and nays were taken and resulted - yeas 32, nays 0, as follows:

Those who voted in the affirmative were: Senators

Amstutz	Armbruster	Austria	Brady
Carey	Cates	Clancy	Coughlin
Dann	Fedor	Fingerhut	Gardner
Goodman	Grendell	Hagan	Hottinger
Jacobson	Jordan	Mallory	Miller
Mumper	Niehaus	Padgett	Prentiss
Roberts	Schuler	Schuring	Spada
Wachtmann	Wilson	Zurz	Harris-32.

So the Senate advised and consented to said appointments.

BILLS FOR THIRD CONSIDERATION

Am. S. B. No. 124-Senator Spada.

To amend sections 101.23, 101.82, 101.83, 101.84, 101.85, 101.86, 122.011, 122.40, 123.151, 149.56, 307.674, 340.02, 1501.04, 1502.04, 1502.05, 1502.11, 1502.12, 1506.30, 1506.34, 1506.35, 1517.02, 1517.23, 1518.01, 1518.03, 1551.35, 2323.44, 3358.10, 3375.61, 3375.62, 3383.01, 3383.02, 3383.03, 3383.04, 3383.05, 3383.06, 3383.07, 3383.08, 3383.09, 3746.09, 3746.35, 3747.02, 3748.01, 3748.02, 3748.04, 3748.05, 3748.16, 3929.482, 3929.85, 3931.01, 3955.05, 3960.06, 4117.01, 4121.442, 4167.09, 4167.25, 4167.27, 4731.143, 4741.03, 4755.481, 4981.03, 5123.35, and 5123.352 of the Revised Code, to amend Section 4 of Am. Sub. H.B. 516 of the 125th General Assembly, and to repeal Section 8 of Am. S.B. 80 of the 125th General Assembly to exempt ten state governmental entities from the operation of the Sunset Review Law, to change the membership of the Ohio Subrogation Rights Commission and accelerate its commencement date, to confirm the sunset review and related amendments, enactments, and repeals of Am. Sub. H.B. 516 of the 125th General Assembly, and to declare an emergency, was considered the third time.

The question being, "Shall the section, Section 7, setting forth the emergency features of the bill, stand as a part of the bill?"

The yeas and nays were taken and resulted - yeas 19, nays 13, as follows:

Those who voted in the affirmative were: Senators

Amstutz	Armbruster	Austria	Carey
Cates	Clancy	Coughlin	Gardner
Goodman	Hottinger	Jordan	Mumper
Niehaus	Padgett	Schuler	Schuring
Spada	Wachtmann		Harris-19.

Those who voted in the negative were: Senators

Brady	Dann	Fedor	Fingerhut
Grendell	Hagan	Jacobson	Mallory
Miller	Prentiss	Roberts	Wilson
			Zurz-13.

So the section, Section 7, setting forth the emergency features of the bill did not stand as a part of the bill.

The question being, "Shall the bill, **Am. S. B. No. 124**, pass?"

The yeas and nays were taken and resulted - yeas 29, nays 3, as follows:

Those who voted in the affirmative were: Senators

Amstutz	Armbruster	Austria	Brady
Carey	Cates	Clancy	Coughlin
Fedor	Fingerhut	Gardner	Goodman
Hottinger	Jacobson	Jordan	Mallory
Miller	Mumper	Niehaus	Padgett
Prentiss	Roberts	Schuler	Schuring
Spada	Wachtmann	Wilson	Zurz
			Harris-29.

Senators Dann, Grendell, and Hagan voted in the negative-3.

So the bill passed.

The question being, "Shall the title be agreed to?"

Senator Spada moved to amend the title as follows:

Add the name: "Harris."

The question being, "Shall the motion be agreed to?"

The motion was agreed to and the title so amended.

Sub. H. B. No. 25-Representatives Wagner, J. Stewart, Hartnett, Carano, Otterman, Latta, Widener, Aslanides, S. Patton, Buehrer, Wolpert, Combs, Kearns, Webster, McGregor, Reidelbach, Law, Core, Schaffer, Faber, Chandler, Cassell, Hagan, Wagoner, Martin, Gilb, Allen, Barrett, Blessing, Book, Carmichael, Coley, Collier, Daniels, DeBose, Dolan, Domenick, C.

Evans, Fessler, Flowers, Gibbs, Harwood, Hughes, Key, Mason, Miller, Perry, Schneider, Seaver, Seitz, D. Stewart, Strahorn, Taylor, Walcher, Willamowski, Williams, Yates, Yuko.

To amend sections 145.06, 742.05, 2743.02, 3307.06, 3309.06, and 5505.042 of the Revised Code and to amend Section 5 of Sub. S.B. 133 of the 125th General Assembly to allow a state officer or employee who in a civil action is alleged to lack immunity from personal liability to participate in proceedings to determine whether the officer or employee is entitled to personal immunity, to revise the law governing the filling of a vacancy on a state retirement system board, and to declare an emergency, was considered the third time.

The question being, "Shall the section, Section 6, setting forth the emergency features of the bill, stand as a part of the bill?"

The yeas and nays were taken and resulted - yeas 21, nays 11, as follows:

Those who voted in the affirmative were: Senators

Amstutz	Armbruster	Austria	Carey
Cates	Clancy	Coughlin	Gardner
Goodman	Grendell	Hottinger	Jacobson
Jordan	Mumper	Niehaus	Padgett
Schuler	Schuring	Spada	Wachtmann
			Harris-21.

Those who voted in the negative were: Senators

Brady	Dann	Fedor	Fingerhut
Hagan	Mallory	Miller	Prentiss
Roberts	Wilson		Zurz-11.

So the section, Section 6, setting forth the emergency features of the bill did not stand as a part of the bill.

The question being, "Shall the bill, **Sub. H. B. No. 25**, pass?"

The yeas and nays were taken and resulted - yeas 28, nays 4, as follows:

Those who voted in the affirmative were: Senators

Amstutz	Armbruster	Austria	Brady
Carey	Cates	Clancy	Coughlin
Fingerhut	Gardner	Goodman	Grendell
Hagan	Hottinger	Jacobson	Jordan
Mallory	Mumper	Niehaus	Padgett
Roberts	Schuler	Schuring	Spada
Wachtmann	Wilson	Zurz	Harris-28.

Senators Dann, Fedor, Miller, and Prentiss voted in the negative-4.

So the bill passed.

The question being, "Shall the title be agreed to?"

The title was agreed to.

INTRODUCTION AND FIRST CONSIDERATION OF BILLS

The following bills were introduced and considered the first time:

S. B. No. 133-Senators Stivers, Coughlin.

To amend sections 519.12, 3501.18, 3513.05, 3513.31, and 3517.03 of the Revised Code to permit the county central committee of a major political party to be comprised of members representing combinations of election precincts, city wards, villages, and townships, as determined by the outgoing committee, and to require a township zoning referendum to be voted upon at a special election to be held on the day of the next primary or general election that occurs at least 75 days after the referendum petition is filed, regardless of whether any election will be held to nominate or elect candidates on that day.

S. B. No. 134-Senators Schuler, Niehaus, Jacobson, Clancy, Spada.

To amend sections 4905.04, 4927.02, 4927.03, and 4927.04 and to enact section 4905.041 of the Revised Code to revise state telecommunications policy, authorize the Public Utilities Commission to allow alternative regulation of basic local exchange service provided by larger companies, and specify the scope of Commission authority regarding wholesale telecommunications services, advanced services, and internet protocol-enabled services.

S. B. No. 135-Senators Brady, Dann, Fedor, Fingerhut, Miller, Roberts, Prentiss, Hagan, Zurz.

To amend section 5747.98 and to enact section 5747.71 of the Revised Code to grant a state earned income tax credit equal to 20 per cent of the federal earned income tax credit.

OFFERING OF RESOLUTIONS

Senator Carey offered the following resolution:

S. R. No. 67-Senators Carey, Coughlin, Harris, Padgett, Schuring, Grendell, Goodman, Armbruster, Jacobson, Spada, Clancy.

To urge the Congress of the United States to provide for a national energy policy that ensures an adequate supply of natural gas, promotes greater energy efficiency, and produces a political consensus to open promising new areas for environmentally responsible natural gas development and production.

The question being, "Shall the resolution, **S. R. No. 67**, be adopted?"

On the motion of Senator Jacobson, **S. R. No. 67**, was referred to the Committee on Reference.

Senator Harris offered the following resolution:

S. R. No. 68-Senators Harris, Prentiss, Amstutz, Armbruster, Austria, Brady, Cates, Clancy, Coughlin, Dann, Fedor, Fingerhut, Gardner, Grendell, Hagan, Hottinger, Jacobson, Mallory, Miller, Mumper, Padgett, Schuler, Schuring, Spada, Wachtmann, Wilson, Zurz, Carey.

Honoring Ronald T. Keller on his retirement.

The question being, "Shall the resolution, **S. R. No. 68**, be adopted?"

So the resolution was adopted.

MESSAGE FROM THE PRESIDENT

Pursuant to Section 3353.07 of the Ohio Revised Code, the Senate Minority Leader designates Senator Mallory to serve on the Program Committee of Ohio Government Telecommunications.

CLERK'S NOTATION

Pursuant to section 10, Article II of the Constitution of the State of Ohio, the following protest was filed by Senator Marc E. Dann on April 26, 2005:

I protest the decision of the Ohio Senate today to pass amended HB 25 because it violates Article II, Section 15(D) of the Ohio Constitution, which provides, in pertinent part, "No bill shall contain more than one subject."

Just last year, the Supreme Court of Ohio reiterated its articulation of the single subject rule:

. . . this holding provides a sufficient guard against logrolling and stealth and fraud in legislation by stating that a manifestly gross and fraudulent violation of the one-subject provision will render an enactment invalid. For, when there is an absence of common purpose or relationship between specific topics in an act and when there are no discernible practical, rational or legitimate reasons for combining the provisions in one act, there is a strong suggestion that the provisions were combined for tactical reasons, i.e., logrolling. Inasmuch as this was the very evil the one-subject rule was designed to prevent, an act which contains such unrelated provisions must necessarily be held to be invalid in order to effectuate the purposes of the rule." In re Nowak, 104 Ohio St. 3d 466, 475 (2004) (citing State ex rel. Dix v. Celeste, 11 Ohio St. 3d 141 (1984))

HB 25 as introduced and the amendment adopted in committee combine sound, but manifestly unrelated, provisions. I supported the substance of amended HB 25. I voted against this bill for one reason only: it violates Article II, Section 15(D) of the Ohio Constitution.

Sincerely,
/s/ MARC DANN
Marc Dann
State Senator
32nd District

On the motion of Senator Jacobson, the Senate adjourned until Wednesday, April 27, 2005 at 1:30 p.m.

Attest:

MATTHEW T. SCHULER,
Clerk.