

OHIO

SENATE

JOURNAL

THURSDAY, MAY 18, 2006

ONE HUNDRED EIGHTY-FIFTH DAY
Senate Chamber, Columbus, Ohio
Thursday, May 18, 2006, 11:00 o'clock a.m.

The Senate met pursuant to adjournment.

Pursuant to Senate Rule No. 3, the Clerk called the Senate to order.

Senator Amstutz was selected to preside according to the rule.

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

REPORTS OF STANDING AND SELECT COMMITTEES

Senator Cates submitted the following report:

The standing committee on State and Local Government and Veterans' Affairs, to which was referred **S. B. No. 313**-Senator Schuring, et al., having had the same under consideration, reports it back with the following amendments and recommends its passage when so amended.

In lines 6 and 55, delete "program" and insert "Program"

In line 3 of the title, delete "program" and insert "Program"

Co-Sponsor: Cates, Kearney, Fedor.

YES - 9: GARY W. CATES, TIMOTHY J. GRENDELL, TOM NIEHAUS, J. KIRK SCHURING, DALE MILLER, TERESA FEDOR, ERIC H. KEARNEY, LARRY A. MUMPER, JEFFRY J. ARMBRUSTER.

NO - 0.

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

The report of the committee was accepted.

Senator Cates submitted the following report:

The standing committee on State and Local Government and Veterans' Affairs, to which was referred **Sub. H. B. No. 375**-Representative Flowers, et al., having had the same under consideration, reports back a substitute bill and recommends its passage.

Co-Sponsors: Cates, Kearney, Fedor.

YES - 9: GARY W. CATES, TIMOTHY J. GRENDELL, TOM NIEHAUS, J. KIRK SCHURING, DALE MILLER,

TERESA FEDOR, ERIC H. KEARNEY, LARRY A.
MUMPER, JEFFRY J. ARMBRUSTER.

NO - 0.

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

The report of the committee was accepted.

Senator Cates submitted the following report:

The standing committee on State and Local Government and Veterans' Affairs, to which was referred **H. B. No. 484**-Representative Boccieri, et al., having had the same under consideration, reports it back with the following amendments and recommends its passage when so amended.

Between lines 21 and 22, insert:

"As used in this section, "other protest activities" means any action that is disruptive or undertaken to disrupt or disturb a funeral or burial service or a funeral procession."

Co-Sponsors: Cates, Grendell, Mumper, Niehaus, Schuring, Fedor, Kearney.

YES - 9: LARRY A. MUMPER, GARY W. CATES, DALE MILLER, TERESA FEDOR, ERIC H. KEARNEY, TIMOTHY J. GRENDALL, TOM NIEHAUS, J. KIRK SCHURING, JEFFRY J. ARMBRUSTER.

NO - 0.

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

The report of the committee was accepted.

Senator Cates submitted the following report:

The standing committee on State and Local Government and Veterans' Affairs, to which was referred **H. C. R. No. 30**-Representative Peterson, et al., having had the same under consideration, reports it back and recommends its adoption.

Co-Sponsors: Cates, Grendell, Armbruster, Niehaus, Schuring, Miller, D., Fedor, Kearney.

YES - 9: GARY W. CATES, TIMOTHY J. GRENDALL, J. KIRK SCHURING, DALE MILLER, ERIC H. KEARNEY,

TERESA FEDOR, TOM NIEHAUS, LARRY A. MUMPER, JEFFRY J. ARMBRUSTER.

NO - 0.

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

The report of the committee was accepted.

Senator Cates submitted the following report:

The standing committee on State and Local Government and Veterans' Affairs, to which was referred **H. C. R. No. 36**-Representative DeWine, et al., having had the same under consideration, reports it back and recommends its adoption.

Co-Sponsors: Cates, Grendell, Armbruster, Mumper, Niehaus.

YES - 6: GARY W. CATES, TIMOTHY J. GRENDALL, TOM NIEHAUS, J. KIRK SCHURING, LARRY A. MUMPER, JEFFRY J. ARMBRUSTER.

NO - 3: DALE MILLER, TERESA FEDOR, ERIC H. KEARNEY.

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 Health, Human Services and Aging, to which was referred **S. B. No. 126**-Senator Wachtmann, having had the same under consideration, reports back a substitute bill and recommends its passage.

YES - 10: KEVIN J. COUGHLIN, RANDY GARDNER, RAY MILLER, CHARLES A. WILSON, JEFFRY J. ARMBRUSTER, PATRICIA M. CLANCY, DAVID GOODMAN, LARRY A. MUMPER, ROBERT F. HAGAN, JIM JORDAN.

NO - 1: ERIC D. FINGERHUT.

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 Health, Human Services and Aging, to which was referred **S. B. No. 287**-Senator Niehaus, et al., having had the same under consideration, reports back a substitute bill and recommends its passage.

YES - 7: KEVIN J. COUGHLIN, JIM JORDAN, RAY MILLER,
CHARLES A. WILSON, JEFFRY J. ARMBRUSTER,
PATRICIA M. CLANCY, LARRY A. MUMPER.

NO - 0.

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 Health, Human Services and Aging, to which was referred **Sub. H. B. No. 197**-Representative Raussen, et al., having had the same under consideration, reports back a substitute bill and recommends its passage.

Co-Sponsor: Clancy.

YES - 11: KEVIN J. COUGHLIN, ERIC D. FINGERHUT, RAY
MILLER, JEFFRY J. ARMBRUSTER, PATRICIA M.
CLANCY, DAVID GOODMAN, JIM JORDAN, LARRY
A. MUMPER, CHARLES A. WILSON, RANDY
GARDNER, ROBERT F. HAGAN.

NO - 0.

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

The report of the committee was accepted.

REPORTS OF CONFERENCE COMMITTEES

Senator Niehaus submitted the following report:

The Committee of Conference, to which the matters of difference between the two houses were referred on Sub. H.B. 162, Representative Peterson - et al., having had the same under consideration, recommends to the respective houses as follows:

The bill as passed by the Senate with the following amendments:

In lines 11 and 2308, after "2929.38," insert "4117.01,"

In line 620, after " contract " insert " , except that each officer or board member who serves solely as an officer or board member and who does not serve the facility and program as director or in a substantially equivalent capacity to director shall not be required to file a disclosure statement with the Ohio ethics commission under section 102.02 of the Revised Code "

Between lines 1791 and 1792, insert:

" **Sec. 4117.01** . As used in this chapter:

(A) "Person," in addition to those included in division (C) of section 1.59 of the Revised Code, includes employee organizations, public employees, and public employers.

(B) "Public employer" means the state or any political subdivision of the state located entirely within the state, including, without limitation, any municipal corporation with a population of at least five thousand according to the most recent federal decennial census; county; township with a population of at least five thousand in the unincorporated area of the township according to the most recent federal decennial census; school district; governing authority of a community school established under Chapter 3314. of the Revised Code; state institution of higher learning; public or special district; state agency, authority, commission, or board; or other branch of public employment.

(C) "Public employee" means any person holding a position by appointment or employment in the service of a public employer, including any person working pursuant to a contract between a public employer and a private employer and over whom the national labor relations board has declined jurisdiction on the basis that the involved employees are employees of a public employer, except:

(1) Persons holding elective office;

(2) Employees of the general assembly and employees of any other legislative body of the public employer whose principal duties are directly related to the legislative functions of the body;

(3) Employees on the staff of the governor or the chief executive of the public employer whose principal duties are directly related to the performance of the executive functions of the governor or the chief executive;

(4) Persons who are members of the Ohio organized militia, while training or performing duty under section 5919.29 or 5923.12 of the Revised Code;

(5) Employees of the state employment relations board;

(6) Confidential employees;

(7) Management level employees;

(8) Employees and officers of the courts, assistants to the attorney general, assistant prosecuting attorneys, and employees of the clerks of courts

who perform a judicial function;

(9) Employees of a public official who act in a fiduciary capacity, appointed pursuant to section 124.11 of the Revised Code;

(10) Supervisors;

(11) Students whose primary purpose is educational training, including graduate assistants or associates, residents, interns, or other students working as part-time public employees less than fifty per cent of the normal year in the employee's bargaining unit;

(12) Employees of county boards of election;

(13) Seasonal and casual employees as determined by the state employment relations board;

(14) Part-time faculty members of an institution of higher education;

(15) Employees of the state personnel board of review;

(16) Participants in a work activity, developmental activity, or alternative work activity under sections 5107.40 to 5107.69 of the Revised Code who perform a service for a public employer that the public employer needs but is not performed by an employee of the public employer if the participant is not engaged in paid employment or subsidized employment pursuant to the activity;

(17) Employees included in the career professional service of the department of transportation under section 5501.20 of the Revised Code ;

(18) Employees of community-based correctional facilities and district community-based correctional facilities created under sections 2301.51 to 2301.58 of the Revised Code who are not subject to a collective bargaining agreement on June 1, 2005 .

(D) "Employee organization" means any labor or bona fide organization in which public employees participate and that exists for the purpose, in whole or in part, of dealing with public employers concerning grievances, labor disputes, wages, hours, terms, and other conditions of employment.

(E) "Exclusive representative" means the employee organization certified or recognized as an exclusive representative under section 4117.05 of the Revised Code.

(F) "Supervisor" means any individual who has authority, in the interest of the public employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other public employees; to responsibly direct them; to adjust their grievances; or to effectively recommend such action, if the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment, provided that:

(1) Employees of school districts who are department chairpersons or consulting teachers shall not be deemed supervisors;

(2) With respect to members of a police or fire department, no person shall be deemed a supervisor except the chief of the department or those individuals who, in the absence of the chief, are authorized to exercise the authority and perform the duties of the chief of the department. Where prior to June 1, 1982, a public employer pursuant to a judicial decision, rendered in litigation to which the public employer was a party, has declined to engage in collective bargaining with members of a police or fire department on the basis that those members are supervisors, those members of a police or fire department do not have the rights specified in this chapter for the purposes of future collective bargaining. The state employment relations board shall decide all disputes concerning the application of division (F)(2) of this section.

(3) With respect to faculty members of a state institution of higher education, heads of departments or divisions are supervisors; however, no other faculty member or group of faculty members is a supervisor solely because the faculty member or group of faculty members participate in decisions with respect to courses, curriculum, personnel, or other matters of academic policy;

(4) No teacher as defined in section 3319.09 of the Revised Code shall be designated as a supervisor or a management level employee unless the teacher is employed under a contract governed by section 3319.01, 3319.011, or 3319.02 of the Revised Code and is assigned to a position for which a license deemed to be for administrators under state board rules is required pursuant to section 3319.22 of the Revised Code.

(G) "To bargain collectively" means to perform the mutual obligation of the public employer, by its representatives, and the representatives of its employees to negotiate in good faith at reasonable times and places with respect to wages, hours, terms, and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement, with the intention of reaching an agreement, or to resolve questions arising under the agreement. "To bargain collectively" includes executing a written contract incorporating the terms of any agreement reached. The obligation to bargain collectively does not mean that either party is compelled to agree to a proposal nor does it require the making of a concession.

(H) "Strike" means continuous concerted action in failing to report to duty; willful absence from one's position; or stoppage of work in whole from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in wages, hours, terms, and other conditions of employment. "Strike" does not include a stoppage of work by employees in good faith because of dangerous or unhealthful working conditions at the place of employment that are abnormal to the place of employment.

(I) "Unauthorized strike" includes, but is not limited to, concerted action during the term or extended term of a collective bargaining agreement or during the pendency of the settlement procedures set forth in section 4117.14 of the Revised Code in failing to report to duty; willful absence from one's position;

stoppage of work; slowdown, or abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing, or coercing a change in wages, hours, terms, and other conditions of employment. "Unauthorized strike" includes any such action, absence, stoppage, slowdown, or abstinence when done partially or intermittently, whether during or after the expiration of the term or extended term of a collective bargaining agreement or during or after the pendency of the settlement procedures set forth in section 4117.14 of the Revised Code.

(J) "Professional employee" means any employee engaged in work that is predominantly intellectual, involving the consistent exercise of discretion and judgment in its performance and requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship; or an employee who has completed the courses of specialized intellectual instruction and is performing related work under the supervision of a professional person to become qualified as a professional employee.

(K) "Confidential employee" means any employee who works in the personnel offices of a public employer and deals with information to be used by the public employer in collective bargaining; or any employee who works in a close continuing relationship with public officers or representatives directly participating in collective bargaining on behalf of the employer.

(L) "Management level employee" means an individual who formulates policy on behalf of the public employer, who responsibly directs the implementation of policy, or who may reasonably be required on behalf of the public employer to assist in the preparation for the conduct of collective negotiations, administer collectively negotiated agreements, or have a major role in personnel administration. Assistant superintendents, principals, and assistant principals whose employment is governed by section 3319.02 of the Revised Code are management level employees. With respect to members of a faculty of a state institution of higher education, no person is a management level employee because of the person's involvement in the formulation or implementation of academic or institution policy.

(M) "Wages" means hourly rates of pay, salaries, or other forms of compensation for services rendered.

(N) "Member of a police department" means a person who is in the employ of a police department of a municipal corporation as a full-time regular police officer as the result of an appointment from a duly established civil service eligibility list or under section 737.15 or 737.16 of the Revised Code, a full-time deputy sheriff appointed under section 311.04 of the Revised Code, a township constable appointed under section 509.01 of the Revised Code, or a member of a township police district police department appointed under section 505.49 of the Revised Code.

(O) "Members of the state highway patrol" means highway patrol troopers and radio operators appointed under section 5503.01 of the Revised Code.

(P) "Member of a fire department" means a person who is in the employ of a fire department of a municipal corporation or a township as a fire cadet, full-time regular firefighter, or promoted rank as the result of an appointment from a duly established civil service eligibility list or under section 505.38, 709.012, or 737.22 of the Revised Code.

(Q) "Day" means calendar day."

Between lines 2327 and 2328, insert:

" **Section 4** . The amendment of section 4117.01 of the Revised Code by this act preserves the nonexempt collective bargaining status of employees of community-based correctional facilities and programs and district community-based correctional facilities and programs who are covered by a collective bargaining agreement existing on June 1, 2005. These employees shall maintain their non-exempt status beyond the termination date of the existing collective bargaining agreement. All employees of community-based correctional facilities and programs and district community-based correctional facilities and programs who are not covered by a collective bargaining agreement on June 1, 2005, shall be exempt from collective bargaining rights under Chapter 4117. of the Revised Code."

In line 2328, delete " 4. " and insert " 5. "

In line 2346, delete " 5. " and insert " 6. "

In line 3 of the title, after "2929.38," insert "4117.01,"

Managers on the Part of the
House of Representatives

/s/ JON M. PETERSON
JON M. PETERSON

/s/ ROBERT E. LATTA
ROBERT E. LATTA

TIMOTHY J. DEGEETER

Managers on the Part of the
Senate

/s/ TOM NIEHAUS
TOM NIEHAUS

/s/ KEVIN J. COUGHLIN
KEVIN J. COUGHLIN

KIMBERLY A. ZURZ

The report of the Committee of Conference was laid over under the rule.

INTRODUCTION AND FIRST CONSIDERATION OF BILLS

The following bills were introduced and considered the first time:

S. B. No. 335-Senator Schuring.

To amend sections 5727.80, 5727.88, 5727.89, and 5727.99 and to enact section 5727.96 of the Revised Code to create a tax credit against kilowatt-hour tax liability for certain eligible businesses.

S. B. No. 336-Senators Mumper, Amstutz.

To amend section 311.01 of the Revised Code to change the eligibility requirements for county sheriff.

Senator Fedor moved that the Senate accede to the House of Representatives request for a Conference Committee on matters of difference between the two houses on **Am. Sub. S. B. No. 185 - Senator Padgett** .

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

The motion was agreed to.

MESSAGE FROM THE PRESIDENT

Pursuant to Senate Rule 30, the President of the Senate appoints the following members to serve on the Conference Committee on Am. Sub. S. B. No. 185 of the 126th General Assembly:

Senator Padgett
Senator Carey
Senator Roberts

Message from the House of Representatives

Mr. President:

I am directed to inform you that the Speaker of the House has appointed as managers on the part of the House on matters of difference between the two Houses on:

Am. Sub. S. B. No. 185 - Representative Coley - et al.

Representatives Widener, Waggoner and D. Stewart

Attest:

Laura P. Clemens,
Clerk.

Senator Fedor moved that the Senate accede to the House of Representatives request for a Conference Committee on matters of difference between the two houses on **Sub. S. B. No. 238 - Senator Niehaus** .

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

The motion was agreed to.

MESSAGE FROM THE PRESIDENT

Pursuant to Senate Rule 30, the President of the Senate appoints the following members to serve on the Conference Committee on Sub. S. B. No. 238 of the 126th General Assembly:

Senator Niehaus
Senator Gardner
Senator R. Miller

Message from the House of Representatives

Mr. President:

I am directed to inform you that the Speaker of the House has appointed as managers on the part of the House on matters of difference between the two Houses on:

Sub. S. B. No. 238 - Senator Niehaus- et al.

Representatives White, Raussen and S. Smith.

Attest:

Laura P. Clemens,
Clerk.

Message from the House of Representatives

Mr. President:

I am directed to inform you that the House of Representatives has concurred in the passage of the following bill:

Sub. S. B. No. 262 - Senators Goodman, Stivers, Clancy, Jacobson, Gardner, Padgett, Schuler, Fedor, Fingerhut, Miller, R., Dann, Kearney, Zurz, Armbruster, Carey, Coughlin, Hagan, Harris, Hottinger, Miller, D., Niehaus, Spada Representatives Latta, Evans, D., Gilb, Willamowski, Seitz, DeGeeter, Mason, Healy, Barrett, Blessing, Brown, Cassell, Chandler, Combs, DeBose, Domenick, Evans, C., Fessler, Flowers, Garrison, Hood, Law, McGregor, J., Otterman, Perry, Raussen, Schaffer, Schneider, Skindell, Smith, G., Stewart, J., Strahorn, Wagoner, Webster, White, Yates, Yuko

To amend sections 2901.07, 2953.21, 2953.23, 2953.71, 2953.72, 2953.73, 2953.74, 2953.78, 2953.80, and 2953.82 and to enact section 2953.84 of the Revised Code to eliminate the former two-year window for applications under a program for post-conviction DNA testing and instead allow an eligible inmate to request post-conviction DNA testing at any time if specified criteria are met, to provide for a court's consideration of all available admissible

evidence in determining whether the program's applicable "outcome determinative" criterion is satisfied, and to make other changes related to post-conviction DNA testing; to specify that the DNA specimen collection procedures for felons and specified misdemeanors apply regardless of when the offender's conviction occurred or guilty plea was entered; and to declare an emergency.

As a substitute bill, in which the concurrence of the Senate is requested:

Attest: Laura P. Clemens,
Clerk.

Said amendments were laid over under the rule.

Message from the House of Representatives

Mr. President:

I am directed to inform you that the House of Representatives has refused to concur in the Senate amendments to:

Am. Sub. H. B. No. 259 - Representative Wagner - et al.

Attest: Laura P. Clemens,
Clerk.

Senator Fedor moved that the Senate insist on the Senate amendments to **Am. Sub. H. B. No. 259**, and ask for a Committee of Conference.

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

The motion was agreed to.

Message from the House of Representatives

Mr. President:

I am directed to inform you that the Speaker of the House of Representatives has signed the following bills:

Sub. H. B. No. 294 - Representative Kilbane - et al.

Am. Sub. H. B. No. 301 - Representative Seitz - et al.

Attest: Laura P. Clemens,
Clerk.

The President signed said bills.

On the motion of Senator Fedor, the Senate adjourned until Tuesday, May 23, 2006 at 1:30 p.m.

Attest:

DAVID A. BATTOCLETTI,
Clerk.