

**OHIO**

**SENATE**

**JOURNAL**

TUESDAY, OCTOBER 25, 2005

ONE HUNDRED SEVENTH DAY  
Senate Chamber, Columbus, Ohio  
**Tuesday, October 25, 2005, 1:30 p.m.**

The Senate met pursuant to adjournment.

Prayer was offered by Pastor Ken Kirk, Grove City United Methodist Church, Grove City, 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:

**H. B. No. 367**-Representatives Calvert, Buehrer, Coley, Flowers, Dolan, McGregor, J., Martin, Stewart, J., Faber, Evans, C., Wagoner, Schlichter, Aslanides, Blessing, Book, Cassell, Chandler, Evans, D., Garrison, Gibbs, Gilb, Hagan, Hoops, Latta, Patton, T., Reidelbach, Sayre, Schaffer, Smith, G., Widener, Willamowski.

To amend Section 209.18.03 of Am. Sub. H.B. 66 of the 126th General Assembly to exempt the Division of Wildlife from making payments into the Department of Natural Resources' Central Support Indirect Fund.

To the Committee on Finance and Financial Institutions.

**S. B. No. 207**-Senator Spada.

To enact sections 4768.01 to 4768.13 and 4768.99 of the Revised Code to create the State Board of Home Inspectors, to require the licensure of home inspectors, and to regulate the licensure and performance of home inspectors.

To the Committee on Insurance, Commerce and Labor.

**S. B. No. 208**-Senators Amstutz, Austria, Cates, Clancy, Carey, Fingerhut, Gardner, Grendell, Harris, Hottinger, Jacobson, Jordan, Mumper, Padgett, Schuler, Schuring, Stivers.

To amend sections 5747.01 and 5748.01 of the Revised Code to exempt from state and school district income taxation military pay and allowances received by individuals who are stationed outside Ohio and who do not have

any immediate family members residing in Ohio.

To the Committee on Ways and Means and Economic Development.

**S. B. No. 209**-Senators Miller, Zurz, Fedor.

To amend sections 5149.02 and 5149.10 of the Revised Code to limit a member of the Ohio Parole Board who is not a victim representative to one nine-year term.

To the Committee on Judiciary - Criminal Justice.

**S. B. No. 210**-Senators Jordan, Wachtmann.

To amend section 184.02 of the Revised Code to impose restrictions on the Third Frontier Commission making grants or loans for activities involving embryonic stem cell research.

To the Committee on Finance and Financial Institutions.

YES - 4: J. KIRK SCHURING, MARK MALLORY, JEFF JACOBSON, BILL HARRIS.

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 Schuring submitted the following report:

Pursuant to Senate Rule No. 37 the Standing Committee on Rules, recommends that **H. B. No. 23 - Representative Reidelbach**, having been referred to the Standing Committee on Judiciary - Criminal Justice, be re-referred to the Standing Committee on Rules.

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

The report of the committee was accepted.

Senator Jordan submitted the following report:

The standing committee on Judiciary - Criminal Justice, to which was referred **Sub. H. B. No. 104**-Representative Martin, et al., having had the same under consideration, reports back a substitute bill and recommends its passage.

Co-Sponsors: Clancy, Austria, Grendell, Zurz, Dann, Jordan, Mallory.

YES - 9: JIM JORDAN, PATRICIA M. CLANCY, STEPHEN C. AUSTRIA, DAVID GOODMAN, TIMOTHY J. GRENDELL, J. KIRK SCHURING, KIMBERLY A. ZURZ, MARC DANN, MARK MALLORY.

NO - 0.

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:

**Jay McDonald**, from Marion, Marion County, Ohio, as a Member of the Ohio Private Investigation and Security Services Commission for a term beginning March 24, 2005 and ending at the close of business December 31, 2006.

**James Sabin**, from London, Madison County, Ohio, as a Member of the Ohio Private Investigation and Security Services Commission for a term beginning March 24, 2005 and ending at the close of business December 31, 2006.

**Gary Vest**, from Powell, Delaware County, Ohio, as a Member of the Ohio Private Investigation and Security Services Commission for a term beginning March 24, 2005 and ending at the close of business December 31, 2006.

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

YES - 7: BILL HARRIS, JEFF JACOBSON, RANDY GARDNER, ROBERT F. SPADA, STEPHEN C. AUSTRIA, JAY HOTTINGER, J. KIRK SCHURING.

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 21, nays 10, 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
Mallory	Miller	Prentiss	Roberts
Wilson			Zurz-10.

So the Senate advised and consented to said appointments.

### HOUSE AMENDMENTS TO SENATE BILLS AND RESOLUTIONS

The amendments of the House of Representatives to:

**Sub. S. B. No. 19**-Senators Schuler, Wachtmann, Mumper, Clancy, Hagan, Goodman, Austria, Roberts, Padgett, Niehaus Representatives Willamowski, Blessing, Calvert, Flowers, Schneider, Seitz, Setzer, Webster.

To amend sections 2317.02 and 4117.14 of the Revised Code to make the testimonial privilege against disclosure of certain communications applicable to critical incident stress management (CISM) team members, to create a testimonial privilege between employee-assistance program personnel and program clients, and to reenact the provision of law designating the Controlling Board as the legislative body authorized to reject recommendations of a fact-finding panel, were taken up.

The question being, "Shall the Senate concur in the amendments of the House of Representatives?"

The yeas and nays were taken and resulted - yeas 21, nays 10, 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
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Mallory  
Wilson

Miller

Prentiss

Roberts  
Zurz-10.

So the Senate concurred in the amendments of the House of Representatives.

Senator Roberts moved to amend the title as follows:

Remove the name: "Roberts."

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

The motion was agreed to and the title so amended.

### BILLS FOR THIRD CONSIDERATION

**Sub. H. B. No. 104**-Representatives Martin, McGregor, Trakas, Wagoner, C. Evans, Perry, Seitz, Coley, Core, Harwood, Allen, Beatty, Blessing, Bulp, Buehrer, Carano, Cassell, Collier, DeBose, DeGeeter, Distel, Dolan, Domenick, Faber, Fende, Fessler, Flowers, Gibbs, Gilb, Hughes, Kearns, Latta, Mason, Miller, Oelslager, Otterman, S. Patton, T. Patton, Raussen, Reidelbach, Reinhard, Sayre, Schaffer, Schneider, Seaver, Setzer, Skindell, G. Smith, S. Smith, D. Stewart, J. Stewart, Strahorn, Williams Senators Clancy, Austria, Grendell, Zurz, Dann, Jordan, Mallory.

To amend sections 1345.51 and 1347.01 and to enact sections 1347.12, 1349.19, 1349.191, and 1349.192 of the Revised Code to require a state agency, an agency of a political subdivision, or a person, including a business entity that does business in Ohio, to contact individuals residing in Ohio if unencrypted or unredacted personal information about those individuals that is included in computerized data owned or licensed by the agency, person, or business entity is accessed and acquired by unauthorized persons and causes or reasonably is believed will create a material risk of the commission of the offense of identity fraud or other fraud to the individual, and to authorize the Attorney General to investigate and enforce compliance with the requirements, was considered the third time.

The question being, "Shall the bill, **Sub. H. B. No. 104**, pass?"

The yeas and nays were taken and resulted - yeas 31, nays 0, as follows:

Those who voted in the affirmative were: Senators

Amstutz  
Carey  
Dann  
Goodman  
Jordan  
Niehaus  
Schuler  
Wilson

Armbruster  
Cates  
Fedor  
Grendell  
Mallory  
Padgett  
Schuring  
Zurz

Austria  
Clancy  
Fingerhut  
Hottinger  
Miller  
Prentiss  
Spada

Brady  
Coughlin  
Gardner  
Jacobson  
Mumper  
Roberts  
Wachtmann  
Harris-31.

So the bill passed.

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

Senator Niehaus moved to amend the title as follows:

Add the names: "Goodman, Jacobson, Mumper, Schuring, Niehaus, Harris, Padgett, Carey, Schuler, Gardner, Miller, Fedor, Brady."

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

The motion was agreed to and the title so amended.

**Sub. H. B. No. 203**-Representatives Raga, Kearns, DeWine, Flowers, Wagoner, Calvert, T. Patton, Allen, Strahorn, Gilb, Chandler, Faber, White, S. Smith, Barrett, Beatty, DeBose, Fessler, G. Smith, Harwood, Hoops, Otterman, Reidelbach, Schneider, Webster, Carmichael, Cassell, C. Evans, D. Evans, Hagan, Hughes, Key, Law, Martin, Schlichter, Setzer, Taylor, S. Patton, Williams Senator Clancy.

To amend sections 3707.26 and 4736.01 and to enact sections 117.102, 3313.473, 3314.15, and 3701.93, 3701.931, 3701.932, 3701.933, 3701.934, 3701.935, and 3701.936 of the Revised Code with respect to inspections of public and nonpublic school buildings by boards of health, to require the Director of Health to establish the School Health and Safety Network to coordinate school inspections, and to include school safety and sanitary inspections within the practice of environmental health for registered sanitarians, was considered the third time.

The question being, "Shall the bill, **Sub. H. B. No. 203**, pass?"

Senator Dann moved to amend as follows:

Delete lines 108 through 112 and insert:

"(3) In the case of a school operated by a school district, the superintendent and board of education of that district;

(4) In the case of a school operated by an educational service center or board of mental retardation and developmental disabilities, the center or board;

(5) The auditor of state."

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

The motion was agreed to.

The question recurred, "Shall the bill, **Sub. H. B. No. 203**, pass?"

The yeas and nays were taken and resulted - yeas 30, nays 1, as follows:

Those who voted in the affirmative were: Senators

Armbruster	Austria	Brady	Carey
Cates	Clancy	Coughlin	Dann
Fedor	Fingerhut	Gardner	Goodman
Grendell	Hottinger	Jacobson	Jordan
Mallory	Miller	Mumper	Niehaus
Padgett	Prentiss	Roberts	Schuler
Schuring	Spada	Wachtmann	Wilson
Zurz			Harris-30.

Senator Amstutz voted in the negative-1.

So the bill passed.

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

Senator Schuler moved to amend the title as follows:

Add the names: "Austria, Coughlin, Dann, Grendell, Harris, Padgett, Roberts, Schuler, Schuring, Zurz, Spada, Gardner."

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

The motion was agreed to and the title so amended.

**Sub. S. B. No. 154-Senator Wachtmann.**

To amend sections 1.64, 1751.01, 2305.113, 2925.02, 2925.03, 2925.11, 2925.12, 2925.14, 2925.23, 2925.36, 3327.10, 3331.02, 3719.06, 3719.81, 4723.481, 4723.50, 4729.01, 4729.51, 4730.01, 4730.02, 4730.03, 4730.05, 4730.06, 4730.07, 4730.10, 4730.11, 4730.12, 4730.16, 4730.18, 4730.19, 4730.21, 4730.22, 4730.25, 4730.26, 4730.27, 4730.28, 4730.31, 4730.32, 4730.33, 4730.34, 4731.141, and 5903.12; to amend, for the purpose of adopting new section numbers as indicated in parentheses, sections 4730.11 (4730.12), 4730.12 (4730.14), and 4730.18 (4730.15); to enact new sections 4730.11, 4730.17, and 4730.18 and sections 4730.08, 4730.081, 4730.09, 4730.091, 4730.13, 4730.20, 4730.38, 4730.39, 4730.40, 4730.401, and 4730.41 to 4730.52; and to repeal sections 4730.15 and 4730.17 of the Revised Code to revise the laws regarding the practice of physician assistants, including the establishment of physician-delegated prescriptive authority, and to modify the authority of advanced practice nurses to furnish supplies of drugs to patients, was considered the third time.

The question being, "Shall the bill, **Sub. S. B. No. 154**, pass?"

The yeas and nays were taken and resulted - yeas 30, nays 1, as follows:

Those who voted in the affirmative were: Senators

Amstutz	Armbruster	Austria	Brady
Carey	Cates	Clancy	Coughlin
Dann	Fedor	Fingerhut	Gardner
Goodman	Grendell	Hottinger	Jacobson
Jordan	Mallory	Mumper	Niehaus



Padgett  
Schuring  
Zurz

Prentiss  
Spada

Roberts  
Wachtmann

Schuler  
Wilson  
Harris-30.

Senator Miller voted in the negative-1.

So the bill passed.

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

Senator Wachtmann moved to amend the title as follows:

Add the names: "Armbruster, Goodman, Hottinger, Mumper, Padgett, Spada, Schuring."

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

The motion was agreed to and the title so amended.

### **INTRODUCTION AND FIRST CONSIDERATION OF BILLS**

The following bills were introduced and considered the first time:

**S. B. No. 211**-Senators Carey, Stivers, Niehaus, Gardner, Jordan, Mumper, Fedor, Spada, Clancy, Padgett, Fingerhut, Amstutz.

To amend section 5511.09 and to enact section 4503.546 of the Revised Code to create "Gold Star Family" license plates and to permit local jurisdictions to request the Director of Transportation to designate a name for a bridge that is part of the highway system.

**S. B. No. 212**-Senators Schuler, Schuring, Gardner, Fingerhut, Grendell, Coughlin, Jordan.

To amend sections 5751.011, 5751.012, 5751.032, 5751.04, 5751.051, and 5751.08 of the Revised Code to eliminate the commercial activity tax one-time registration fee.

**S. B. No. 213**-Senator Clancy.

To amend section 5122.10 of the Revised Code to permit a licensed professional clinical counselor to take certain persons into custody and transport those persons to a hospital.

### **OFFERING OF RESOLUTIONS**

Senator Harris offered the following resolution:

**S. R. No. 127**-Senator Harris.

Honoring Christa Marie Colasante for outstanding service to the State of

Ohio.

The question being, "Shall the resolution, **S. R. No. 127**, be adopted?"

So the resolution was adopted.

### COMMUNICATIONS FROM THE GOVERNOR

The President handed down the following message from the Governor which was read by the Clerk:

**STATE OF OHIO  
EXECUTIVE DEPARTMENT  
OFFICE OF THE GOVERNOR  
COLUMBUS**

I, Bob Taft, Governor of the State of Ohio, do hereby appoint, Merle Grace Kearns, from Springfield, Clark County, Ohio, as Director of the Ohio Department of Aging for a term beginning August 29, 2005 and continuing at the pleasure of the Governor.

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Ohio to be affixed, at Columbus, this 25th day of August in the year of our Lord, two thousand and five.

[Seal]

Bob Taft,  
Governor.

Said appointment was referred to the Committee on Rules.

#### Message from the House of Representatives

Mr. President:

I am directed to inform you that the House of Representatives has passed the following bills in which the concurrence of the Senate is requested:

**Am. Sub. H. B. No. 142** - Representatives Willamowski, Evans, C., McGregor, J., Seitz, Raga, Latta, Hartnett, Gibbs, Calvert, Cassell, Coley, Combs, Core, Domenick, Evans, D., Flowers, Gilb, Hagan, Hughes, Martin, Reidelbach, Setzer, Smith, G., Webster

To amend section 5747.08 and to enact sections 5747.082 and 5747.124 of the Revised Code to authorize the Tax Commissioner to collect from state income tax refunds certain debts owed to courts, counties, municipal corporations, and townships, and to provide "innocent spouse" relief from joint and several liability for income tax under prescribed circumstances.

**Sub. H. B. No. 257** - Representatives Hagan, Evans, D., Strahorn, Ujvagi, Chandler, Allen, Barrett, Beatty, Brown, Calvert, Carano, Cassell, Combs, DeBose, Domenick, Evans, C., Faber, Fende, Flowers, Garrison, Harwood, Hughes, Martin, Mason, McGregor, J., Oelslager, Patton, T., Sayre, Schaffer, Seitz, Smith, S., Stewart, D., Stewart, J., Taylor, Widowfield, Yates, Yuko

To enact sections 3721.041 and 3727.19 of the Revised Code to require nursing homes and other homes for the elderly to offer residents vaccinations against influenza and pneumonia and to require hospitals to offer certain patients vaccinations against influenza and pneumonia.

Attest:

Laura P. Clemens,  
Clerk.

Said bills were considered the first time.

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. 140** - Representative Carmichael - et al.

**Sub. H. B. No. 234** - Representative Wolpert - et al.

Attest:

Laura P. Clemens,  
Clerk.

The President signed said bills.

**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 October 25, 2005:

We protest the decision of the Ohio Senate today to concur in the House amendment to Senate Bill 19 because the amendment violates Article II, Section 15 of the Ohio Constitution, often referred to as the "single subject rule."

SB 19 originally passed the Senate by a unanimous 32-0 vote. This was a rare unanimous vote to protect Critical Incident Stress Management Teams

from tort liability. The House included an amendment on a completely different subject: designating the Controlling Board as a "legislative body" for the purpose of accepting or rejecting the recommendations of a fact-finding panel in a labor dispute.

In its action today, the Senate ensured that the Supreme Court of Ohio will once again have to tell the General Assembly that it violated the Ohio Constitution's single subject rule.

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))*

It can hardly be said there is a common purpose or relationship between granting immunity from certain tort actions and involving the Controlling Board in labor disputes. This kind of log-rolling is precisely what the Supreme Court of Ohio has time and time again ruled that the Ohio Constitution forbids.

This violation of the Ohio Constitution is even more egregious because earlier this year the Franklin County Court of Common Pleas ruled that the General Assembly's last attempt to do implement this same Controlling Board measure violated the single-subject rule. SB 19 is certain to suffer the same fate.

Because the House amendment is a manifestly gross violation of the single-subject rule of the Ohio Constitution, we protest the Senate's decision to concur with the House amendment.

Senator C.J. Prentiss, Minority Leader  
Senator Mark Mallory, Assistant Minority Leader  
Senator Teresa Fedor, Minority Whip  
Senator Dan Brady  
Senator Marc Dann  
Senator Eric Fingerhut  
Senator Ray Miller  
Senator Tom Roberts  
Senator Charlie Wilson

Senator Kimberly Zurz

On the motion of Senator Jacobson, the Senate adjourned until Wednesday, October 26, 2005 at 1:30 p.m.

Attest:

DAVID A. BATTOCLETTI,  
Clerk.