

OHIO

SENATE

JOURNAL

THURSDAY, DECEMBER 1, 2005

ONE HUNDRED TWENTIETH DAY
Senate Chamber, Columbus, Ohio
Thursday, December 1, 2005, 11:00 o'clock a.m.

The Senate met pursuant to adjournment.

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

INTRODUCTION AND FIRST CONSIDERATION OF BILLS

The following bills were introduced and considered the first time:

S. B. No. 234-Senator Niehaus.

To amend sections 3714.01, 3714.02, 3714.03, 3714.04, 3714.05, 3714.06, 3714.071, 3714.09, 3714.11, 3714.12, 3714.13, and 3734.281 and to enact sections 3714.051, 3714.052, 3714.053, 3714.061, 3714.062, 3714.081, 3714.082, 3714.083, 3714.101, and 3714.20 of the Revised Code to revise the statutes governing construction and demolition debris facilities and to declare an emergency.

S. B. No. 235-Senators Padgett, Wilson, Amstutz, Armbruster, Carey, Cates, Clancy, Fingerhut, Mumper, Niehaus, Schuring, Zurz.

To amend section 3706.01 of the Revised Code to revise the definition of "air quality facility" under the Air Quality Development Authority Law.

OFFERING OF RESOLUTIONS

Pursuant to Senate Rule No. 54, the following resolutions were offered:

S. R. No. 140-Senator Harris.

Honoring Sue Kennedy for her exemplary service to the Ohio General Assembly.

S. R. No. 141-Senator Gardner.

Honoring the Bowling Green High School girls cross country team as the 2005 Division I State Champion.

S. R. No. 142-Senator Austria.

Honoring the Greeneview High School boys soccer team on winning the 2005 Division III State Championship.

The question being, "Shall the resolutions listed under the President's prerogative be adopted?"

So the resolutions were adopted.

COMMUNICATIONS FROM THE GOVERNOR

The President handed down the following messages from the Governor which were 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, Bert Dawson, Republican, from East Liverpool, Delaware County, Ohio, as a Member of the State Board of Registration for Professional Engineers and Surveyors for a term beginning November 18, 2005, and ending at the close of business September 24, 2010, replacing Dean C. Ringle, whose term expired.

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 21st day of November in the year of our Lord, two thousand and five.

[Seal]

Bob Taft,
Governor.

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

I, Bob Taft, Governor of the State of Ohio, do hereby appoint, Frederick E. Mills, Republican, from Upper Arlington, Franklin County, Ohio, as a Member of the Board of Building Standards for a new term beginning November 18, 2005 and ending at the close of business October 13, 2009.

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 21st day of November in the year of our Lord, two thousand and five.

[Seal]

Bob Taft,
Governor.

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

I, Bob Taft, Governor of the State of Ohio, do hereby appoint, Michael J. Morgan, Democrat, from Concord Twp., Lake County, Ohio, as a Member of the Board of Building Standards for a new term beginning November 18, 2005 and ending at the close of business October 13, 2009.

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 21st day of November in the year of our Lord, two thousand and five.

[Seal]

Bob Taft,
Governor.

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

I, Bob Taft, Governor of the State of Ohio, do hereby appoint, Larry Price, Democrat, from Columbus, Franklin County, Ohio, as a Member of the State Chiropractic Board for a term beginning November 18, 2005, and ending at the close of business October 2, 2009, replacing Dennis L. Wojtanowski, who resigned.

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 21st day of November in the year of our Lord, two thousand and five.

[Seal]

Bob Taft,
Governor.

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

I, Bob Taft, Governor of the State of Ohio, do hereby appoint, Beryl E. Rothschild, Republican, from University Heights, Cuyahoga County, Ohio, as a Member of the Board of Building Standards for a term beginning November 18, 2005 and ending at the close of business October 13, 2009.

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 21st

day of November in the year of our Lord, two thousand and five.

[Seal]

Bob Taft,
Governor.

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

I, Bob Taft, Governor of the State of Ohio, do hereby appoint, Stephen L. Sharp, Republican, from Springfield, Clark County, Ohio, as a Member of the State Board of Examiners of Architects for a term beginning November 18, 2005, and ending at the close of business October 2, 2010, replacing Christopher Ewald, whose term expired.

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 21st day of November in the year of our Lord, two thousand and five.

[Seal]

Bob Taft,
Governor.

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

I, Bob Taft, Governor of the State of Ohio, do hereby appoint, Lee C. Weingart, from Cleveland, Cuyahoga County, Ohio, as a Member of the State Lottery Commission for a term beginning November 18, 2005, and ending at the close of business August 1, 2007, replacing Beverly Martin, who resigned.

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 21st day of November in the year of our Lord, two thousand and five.

[Seal]

Bob Taft,
Governor.

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

I, Bob Taft, Governor of the State of Ohio, do hereby appoint, Earl L. Wiley, Republican, from Cincinnati, Butler County, Ohio, as a Member of the State Chiropractic Board for a new term beginning November 18, 2005 and ending at the close of business October 2, 2009.

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 21st day of November in the year of our Lord, two thousand and five.

[Seal]

Bob Taft,
Governor.

Said appointments were 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 concurred in the passage of the following bill:

Am. Sub. S. B. No. 87 - Senators Wachtmann, Hagan, Gardner, Mumper, Clancy, Amstutz, Austria, Carey, Niehaus, Padgett, Schuring, Jordan, Harris, Zurz, Schuler, Armbruster, Brady, Cates, Coughlin, Dann, Fedor, Fingerhut, Goodman, Grendell, Hottinger, Jacobson, Mallory, Miller, Prentiss, Roberts, Spada, Wilson Representatives Raussen, Barrett, Beatty, Brown, Martin, Smith, G., Combs, Smith, S., Schneider, Mason, Allen, Blessing, Buehrer, Cassell, Collier, DeBose, DeGeeter, Distel, Domenick, Evans, C., Fende, Flowers, Garrison, Gilb, Hagan, Harwood, Healy, Hoops, Hughes, Key, Koziura, Latta, Otterman, Patton, T., Reidelbach, Sayre, Seitz, Setzer, Stewart, D., Ujvagi, Wagoner, Webster, Willamowski, Yuko

To amend sections 3721.011, 3721.04, 4766.09, 4766.14, 5111.971, 5126.15, and 5126.20 and to enact section 5126.201 of the Revised Code and to amend Section 206.66.53 of Am. Sub. H.B. 66 of the 126th General Assembly regarding the provision of hospice care in residential care facilities and the addition of four legislators as non-voting members of the Medicaid Administrative Study Council, regarding the Medicaid voucher pilot program, to exempt certain entities from the Medical Transportation Law, to establish minimum requirements to be a conditional status service and support administrator, and to make a change regarding who can supervise conditional status service and support administrators.

As a substitute bill with the following additional amendments, in which the concurrence of the Senate is requested:

In line 14, after "3721.04," insert "4766.09, 4766.14,"

Delete lines 17 through 129 and insert:

"**Sec. 3721.011.** (A) In addition to providing accommodations, supervision, and personal care services to its residents, a residential care facility may provide skilled nursing care to its residents as follows:

- (1) Supervision of special diets;
- (2) Application of dressings, in accordance with rules adopted under section 3721.04 of the Revised Code;
- (3) ~~Providing for the~~ Subject to division (B)(1) of this section, administration of medication ~~to residents, to the extent authorized under division (B)(1) of this section;~~
- (4) ~~Other~~ Subject to division (C) of this section, other skilled nursing care provided on a part-time, intermittent basis ~~pursuant to division (C) of this section~~ for not more than a total of one hundred twenty days in a twelve-month period;
- (5) Subject to division (D) of this section, skilled nursing care provided for more than one hundred twenty days in a twelve-month period to a hospice patient, as defined in section 3712.01 of the Revised Code.

A residential care facility may not admit or retain an individual requiring skilled nursing care that is not authorized by this section. A residential care facility may not provide skilled nursing care beyond the limits established by this section.

(B)(1) A residential care facility may admit or retain an individual requiring medication, including biologicals, only if the individual's personal physician has determined in writing that the individual is capable of self-administering the medication or the facility provides for the medication to be administered to the individual by a home health agency certified under Title XVIII of the "Social Security Act," 4979 Stat. 620 (~~4935~~1965), 42 U.S.C.A. ~~301~~1395, as amended; a hospice care program licensed under Chapter 3712. of the Revised Code; or a member of the staff of the residential care facility who is qualified to perform medication administration. Medication may be administered in a residential care facility only by the following persons authorized by law to administer medication:

- (a) A registered nurse licensed under Chapter 4723. of the Revised Code;
- (b) A licensed practical nurse licensed under Chapter 4723. of the Revised Code who holds proof of successful completion of a course in medication administration approved by the board of nursing and who administers the medication only at the direction of a registered nurse or a physician authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery;
- (c) A medication aide certified under Chapter 4723. of the Revised Code;

(d) A physician authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery.

(2) In assisting a resident with self-administration of medication, any member of the staff of a residential care facility may do the following:

(a) Remind a resident when to take medication and watch to ensure that the resident follows the directions on the container;

(b) Assist a resident by taking the medication from the locked area where it is stored, in accordance with rules adopted pursuant to section 3721.04 of the Revised Code, and handing it to the resident. If the resident is physically unable to open the container, a staff member may open the container for the resident.

(c) Assist a physically impaired but mentally alert resident, such as a resident with arthritis, cerebral palsy, or Parkinson's disease, in removing oral or topical medication from containers and in consuming or applying the medication, upon request by or with the consent of the resident. If a resident is physically unable to place a dose of medicine to the resident's mouth without spilling it, a staff member may place the dose in a container and place the container to the mouth of the resident.

(C) A residential care facility may admit or retain individuals who require skilled nursing care beyond the supervision of special diets, application of dressings, or administration of medication, only if the care will be provided on a part-time, intermittent basis for not more than a total of one hundred twenty days in any twelve-month period. In accordance with Chapter 119. of the Revised Code, the public health council shall adopt rules specifying what constitutes the need for skilled nursing care on a part-time, intermittent basis. The council shall adopt rules that are consistent with rules pertaining to home health care adopted by the director of job and family services for the medical assistance program established under Chapter 5111. of the Revised Code. Skilled nursing care provided pursuant to this division may be provided by a home health agency certified under Title XVIII of the "Social Security Act," ~~49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended;~~ a hospice care program licensed under Chapter 3712. of the Revised Code, or a member of the staff of a residential care facility who is qualified to perform skilled nursing care.

A residential care facility that provides skilled nursing care pursuant to this division shall do both of the following:

(1) Evaluate each resident receiving the skilled nursing care at least once every seven days to determine whether the resident should be transferred to a nursing home;

(2) Meet the skilled nursing care needs of each resident receiving the care.

(D) A residential care facility may admit or retain a hospice patient who requires skilled nursing care for more than one hundred twenty days in any twelve-month period only if the facility has entered into a written agreement

with a hospice care program licensed under Chapter 3712. of the Revised Code. The agreement between the residential care facility and hospice program shall include all of the following provisions:

(1) That the hospice patient will be provided skilled nursing care in the facility only if a determination has been made that the patient's needs can be met at the facility;

(2) That the hospice patient will be retained in the facility only if periodic redeterminations are made that the patient's needs are being met at the facility;

(3) That the redeterminations will be made according to a schedule specified in the agreement;

(4) That the hospice patient has been given an opportunity to choose the hospice care program that best meets the patient's needs.

(E) Notwithstanding any other provision of this chapter, a residential care facility in which residents receive skilled nursing care pursuant to this section is not a nursing home."

Between lines 185 and 186, insert:

"**Sec. 4766.09.** ~~(A)~~ This chapter does not apply to any of the following:

~~(1)~~(A) A person rendering services with an ambulance in the event of a disaster situation when licensees' vehicles based in the locality of the disaster situation are incapacitated or insufficient in number to render the services needed;

~~(2)~~(B) Any person operating an ambulance, ambulette, rotorcraft air ambulance, or fixed wing air ambulance outside this state unless receiving a person within this state for transport to a location within this state;

~~(3)~~(C) A publicly owned or operated emergency medical service organization and the vehicles it owns or leases and operates, except as provided in section 307.051, division (G) of section 307.055, division (F) of section 505.37, division (B) of section 505.375, and division (B)(3) of section 505.72 of the Revised Code;

~~(4)~~(D) An ambulance, ambulette, rotorcraft air ambulance, fixed wing air ambulance, or nontransport vehicle owned or leased and operated by the federal government;

~~(5)~~(E) A publicly owned and operated fire department vehicle;

~~(6)~~(F) Emergency vehicles owned by a corporation and operating only on the corporation's premises, for the sole use by that corporation;

~~(7)~~(G) An ambulance, nontransport vehicle, or other emergency medical service organization vehicle owned and operated by a municipal corporation;

~~(8)~~(H) A motor vehicle titled in the name of a volunteer rescue service organization, as defined in section 4503.172 of the Revised Code;

~~(9)~~(I) A public emergency medical service organization;

~~(10)~~(J) A fire department, rescue squad, or life squad comprised of volunteers who provide services without expectation of remuneration and do not receive payment for services other than reimbursement for expenses;

~~(11)~~(K) A private, nonprofit emergency medical service organization when fifty per cent or more of its personnel are volunteers, as defined in section 4765.01 of the Revised Code;

~~(12)~~(L) Emergency medical service personnel who are regulated by the state board of emergency medical services under Chapter 4765. of the Revised Code;

~~(13)~~A(M) Any of the following that operates a transit bus, as that term is defined in division (Q) of section 5735.01 of the Revised Code, unless the entity provides ambulette services that are reimbursed under the state medicaid plan:

(1) A public nonemergency medical service organization

~~(B) Except for the requirements specified in section 4766.14 of the Revised Code, this chapter does not apply to an ambulette service provider operating under standards adopted by rule by the department of aging, but only during the period of time on any day that the provider is solely serving the department or the department's designee. This chapter applies to an ambulette service provider at any time that the ambulette service provider is not solely serving the department or the department's designee;~~

(2) An urban or rural public transit system;

(3) A private nonprofit organization that receives grants under section 5501.07 of the Revised Code.

(N) An entity or vehicle owned by an entity that is certified by the department of aging or the department's designee under section 173.391 of the Revised Code and meets the requirements of section 4766.14 of the Revised Code, unless the entity or vehicle provides ambulette services that are reimbursed under the state medicaid plan;

(O) A vehicle that meets both of the following criteria, unless the vehicle provides services that are reimbursed under the state medicaid plan:

(1) The vehicle was purchased with funds from a grant made by the United States secretary of transportation under 49 U.S.C. 5310;

(2) The department of transportation holds a lien on the vehicle.

Sec. 4766.14. (A) An ambulette service provider described in division ~~(B)~~(M) or (N) of section 4766.09 of the Revised Code or the entity responsible for a vehicle described in division (O) of section 4766.09 of the Revised Code that provides ambulette services shall do all of the following:

(1) Make available to all its ambulette drivers while operating ambulette

vehicles a means of two-way communication using either ambulette vehicle radios or cellular telephones;

(2) Equip every ambulette vehicle with one isolation and biohazard disposal kit that is permanently installed or secured in the vehicle's cabin;

(3) Before hiring an applicant for employment as an ambulette driver, obtain all of the following:

(a) A valid copy of a signed statement from a licensed physician acting within the scope of the physician's practice declaring that the applicant does not have a medical condition or physical condition, including vision impairment that cannot be corrected, that could interfere with safe driving, passenger assistance, and emergency treatment activity or could jeopardize the health and welfare of a client or the general public;

(b) All of the certificates and results required under divisions (A)(2), (3), and (4) of section 4766.15 of the Revised Code.

(B) No ambulette service provider described in division ~~(B)~~(M) or the (N) of section 4766.09 of the Revised Code or entity responsible for a vehicle described in division (O) of section 4766.09 of the Revised Code that provides ambulette services shall employ an applicant as an ambulette driver if the applicant has six or more points on the applicant's driving record pursuant to section 4510.036 of the Revised Code.

(C) ~~The(1)~~ Except as provided in division (C)(2) of this section, the department of aging shall administer and enforce this section.

(2) The department of transportation shall administer and enforce this section as it applies to entities described in division (M) of section 4766.09 of the Revised Code."

Delete lines 186 through 239 and insert:

"**Sec. 5111.971.** (A) As used in this section, "long-term care medicaid waiver component" means any of the following:

(1) The PASSPORT program created under section 173.40 of the Revised Code;

(2) The medicaid waiver component called the choices program that the department of aging administers;

(3) A medicaid waiver component that the department of job and family services administers.

(B) The director of job and family services shall submit a request to the United States secretary of health and human services for a waiver of federal medicaid requirements that would be otherwise violated in the creation of a pilot program under which not more than two hundred individuals who meet the pilot program's eligibility requirements specified in division (D) of this section receive a spending authorization to pay for the cost of medically necessary

~~health care~~ home and community-based services that the pilot program covers. The spending authorization shall be in an amount not exceeding seventy per cent of the average cost under the medicaid program for providing nursing facility services to an individual. An individual participating in the pilot program shall also receive necessary support services, including fiscal intermediary and other case management services, that the pilot program covers.

(C) If the United States secretary of health and human services approves the waiver submitted under division (B) of this section, the department of job and family services shall enter into a contract with the department of aging under section 5111.91 of the Revised Code that provides for the department of aging to administer the pilot program that the waiver authorizes.

(D) To be eligible to participate in the pilot program created under division (B) of this section, an individual must meet all of the following requirements:

(1) Need an intermediate level of care as determined under rule 5101:3-3-06 of the Administrative Code or a skilled level of care as determined under rule 5101:3-3-05 of the Administrative Code;

(2) At the time the individual applies to participate in the pilot program, be one of the following:

(a) A nursing facility resident ~~who is seeking to move to a residential care facility or county or district home and~~ who would remain in a nursing facility if not for the pilot program;

(b) A participant of any long-term care medicaid waiver component who would move to a nursing facility if not for the pilot program.

(3) Meet all other eligibility requirements for the pilot program established in rules adopted under section 5111.85 of the Revised Code.

(E) The director of job and family services may adopt rules under section 5111.85 of the Revised Code as the director considers necessary to implement the pilot program created under division (B) of this section. The director of aging may adopt rules under Chapter 119. of the Revised Code as the director considers necessary for the pilot program's implementation. The rules may establish a list of medicaid-covered services not covered by the pilot program that an individual participating in the pilot program may not receive if the individual also receives medicaid-covered services outside of the pilot program."

In line 387, after "3721.04," insert "4766.09, 4766.14,"

In line 1 of the title, after "3721.04," insert "4766.09, 4766.14,"

In line 9 of the title, after the comma insert "to exempt certain entities from the Medical Transportation Law,"

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 concurred in the passage of the following bill:

Am. S. B. No. 144 - Senators Schuler, Clancy, Mumper, Spada
Representatives Seitz, Collier, Cassell, Distel, Schaffer, Barrett, Combs,
DeBose, Domenick, Fende, Fessler, Flowers, Hartnett, Hughes, Miller, Raga,
Schneider, Stewart, D., Yuko

To amend section 4763.05 of the Revised Code to modify the Ohio Real Estate Appraiser law with respect to the temporary registration of appraisers licensed or certified in another state.

With the following additional amendments, in which the concurrence of the Senate is requested:

In line 207, after "temporary" insert "recognition of a"

In line 219, strike through "temporary certificate or license,"; after "to" insert ", or recognize on a temporary basis an appraiser from another state that is"

In line 235, strike through "temporary certificate or license,"

In line 236, after "person" insert ", or recognize on a temporary basis an appraiser from another state."

Attest:

Laura P. Clemens,
Clerk.

Said amendments were laid over under the rule.

On the motion of Senator Padgett, the Senate adjourned until Friday, December 2, 2005 at 11:00 o'clock a.m.

Attest:

DAVID A. BATTOCLETTI,
Clerk.