

**OHIO
SENATE
JOURNAL**

TUESDAY, SEPTEMBER 29, 2009

NINETY-NINTH DAY
Senate Chamber, Columbus, Ohio
Tuesday, September 29, 2009, 1:30 p.m.

The Senate met pursuant to adjournment.

Prayer was offered by Austin Schaeffer, Campus Minister, Saint Thomas More Newman Center, Columbus, Ohio, followed by the Pledge of Allegiance to the Flag.

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

On the motion of Senator Niehaus, the Senate recessed until 2:25 p.m.

The Senate met pursuant to the recess.

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

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

S. B. No. 171-Senator Patton.

To limit the amount of money that may be spent on signs that identify the American Recovery and Reinvestment Act of 2009 as the source of specific project funding.

To the Committee on Highways and Transportation.

S. B. No. 172-Senator Grendell, et al.

To enact section 3301.41 of the Revised Code to require the Department of Education to waive fees for certain Ohio residents taking the GED test.

To the Committee on Finance and Financial Institutions.

S. C. R. No. 19-Senator Grendell, et al.

To urge the President and the Congress of the United States to protect the rights of seniors when considering proposals for health care reform.

To the Committee on Health, Human Services and Aging.

S. B. No. 173-Senator Cates, et al.

To amend sections 3306.25 and 3321.05 of the Revised Code to delay by one year the effective date of rules regarding school districts' expenditure of funds for core teachers and the requirement for districts to provide all-day kindergarten for all kindergartners.

To the Committee on Education.

S. J. R. No. 7-Senator Grendell, et al.

Proposing to enact Section 43 of Article II of the Constitution of the State of Ohio to prohibit a law or rule from compelling a person, employer, or health care provider to participate in a health care system.

To the Committee on Insurance, Commerce and Labor.

YES - 5: SHIRLEY A. SMITH, CAPRI S. CAFARO, BILL HARRIS, TOM NIEHAUS, KEITH L. FABER.

NO - 0.

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

The report of the committee was accepted.

Said bills and resolutions 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 Health, Human Services and Aging, to which was referred **S. B. No. 161**-Senators Miller, D., Patton, et al., having had the same under consideration, reports it back and recommends its passage.

Co-Sponsors: Gillmor, Jones, Morano.

YES - 7: KAREN GILLMOR, DAVID GOODMAN, SHANNON JONES, SUSAN L. MORANO, SHIRLEY A. SMITH, JIMMY STEWART, RAY MILLER.

NO - 0.

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

The report of the committee was accepted.

Senator Harris submitted the following report:

The Standing Committee on Rules to which were referred the appointment by the Governor of:

August L. Fluker, Jr., Democrat, from Cleveland, Cuyahoga County, Ohio, as a Member of the State Board of Examiners of Architects for a term beginning April 16, 2009 and ending at the close of business October 2, 2013, replacing Gerald Hammond, whose term expired.

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

YES - 9: BILL HARRIS, TOM NIEHAUS, KEITH L. FABER,
MARK D. WAGONER, JON A. HUSTED, JOHN A.
CAREY, JASON H. WILSON, RAY MILLER, SHIRLEY
A. SMITH.

NO - 0.

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

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

Those who voted in the affirmative were: Senators

Cafaro	Carey	Cates	Faber
Fedor	Gibbs	Gillmor	Goodman
Grendell	Hughes	Husted	Jones
Kearney	Miller D	Miller R	Morano
Niehaus	Patton	Sawyer	Schaffer
Schiavoni	Schuring	Seitz	Smith
Stewart	Strahorn	Turner	Wagoner
Widener	Wilson		Harris-31.

So the Senate advised and consented to said appointment.

RESOLUTIONS REPORTED BY COMMITTEE

S. C. R. No. 13-Senators Grendell, Faber.

Cosponsors: Senators Gibbs, Buehrer, Cates, Hughes, Schuring.

To claim sovereignty over certain powers pursuant to the Tenth Amendment to the Constitution of the United States of America, to notify Congress to limit and end certain mandates, and to insist that federal legislation contravening the Tenth Amendment be prohibited or repealed.

WHEREAS, The Tenth Amendment to the Constitution of the United States reads: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people"; and

WHEREAS, The Tenth Amendment defines the total scope of federal power as being that specifically granted to the federal government by the Constitution of the United States and no more; and

WHEREAS, The scope of power defined by the Tenth Amendment signifies that the federal government was created by the states specifically to be an agent of the states; and

WHEREAS, Today, in 2009, the states are often treated as agents of the federal government; and

WHEREAS, Many federal laws directly contravene the Tenth Amendment to the Constitution of the United States; and

WHEREAS, We believe in the importance of all levels of government working together to serve the citizens of our country, by respecting the constitutional provisions that properly delineate the authority of federal, state, and local governments; and

WHEREAS, The Tenth Amendment assures that we, the people of the United States and each sovereign state in the Union of States, now have, and have always had, rights the federal government may not usurp; and

WHEREAS, Article IV, Section 4 of the Constitution of the United States, states in part, "The United States shall guarantee to every State in this Union a Republican Form of Government," and the Ninth Amendment to the Constitution of the United States states that "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people"; and

WHEREAS, The United States Supreme Court ruled in *New York v. United States*, 505 U.S. 144 (1992), that Congress may not simply commandeer the legislative and regulatory processes of the states by compelling them to enact and enforce regulatory programs; and

WHEREAS, the United States Supreme Court, in *Printz v. United States/Mack v. United States*, 521 U.S. 898 (1997), reaffirmed that the Constitution of the United States established a system of "dual sovereignty" that retains "a residuary and inviolable sovereignty" by the states. The majority of the United States Supreme Court noted in that case (521 U.S. 898, 921-922):

"As [President] Madison expressed it: '[T]he local or municipal authorities form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority than the general authority is subject to them, within its own sphere.' The Federalist No. 39, at 245.

This separation of the two spheres is one of the Constitution's structural protections of liberty. 'Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.' . . . To quote [President] Madison once again:

'In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.' The Federalist No. 51, at 323"; and

WHEREAS, A number of proposals by previous administrations, some now pending proposals by the present administration, and some proposals by Congress may further violate the Tenth Amendment restriction on the scope of federal power; now therefore be it

RESOLVED, That the State of Ohio hereby acknowledges and reaffirms its residuary and inviolable sovereignty under the Tenth Amendment to the Constitution of the United States over all powers not otherwise enumerated and granted to the federal government by the Constitution of the United States; and be it further

RESOLVED, That this resolution serves as notice to the federal government as agent of the states, to end federal mandates that are beyond the scope of the constitutionally delegated powers; and be it further

RESOLVED, That all compulsory federal legislation that directs states to comply under threat of civil or criminal penalty or sanction or that requires states to enact legislation or lose federal funding be prohibited or repealed; and be it further

RESOLVED, That the Clerk of the Senate transmit authenticated copies of this resolution to the President of the United States, the President Pro Tempore of the United States Senate, the Speaker of the United States House of Representatives, the Speaker of the House of Representatives and the President of the Senate of each state's legislature, and each member of the Ohio Congressional delegation.

The question being, "Shall the concurrent resolution, **S. C. R. No. 13**, be adopted?"

The yeas and nays were taken and resulted - yeas 19, nays 12, as follows:

Those who voted in the affirmative were: Senators

Carey	Cates	Faber	Gibbs
Gillmor	Goodman	Grendell	Hughes
Husted	Jones	Niehaus	Patton
Schaffer	Schuring	Seitz	Stewart
Wagoner	Widener		Harris-19.

Those who voted in the negative were: Senators

Cafaro	Fedor	Kearney	Miller D
Miller R	Morano	Sawyer	Schiavoni
Smith	Strahorn	Turner	Wilson-12.

So the concurrent resolution was adopted.

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

Senator Grendell moved to amend the title as follows:

Add the names: "Carey, Goodman, Harris, Husted, Niehaus, Patton, Schaffer, Seitz, Wagoner, Jones."

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

The motion was agreed to and the title so amended.

BILLS FOR THIRD CONSIDERATION

Am. S. B. No. 51-Senator Morano.

Cosponsors: Senators Sawyer, Miller, D., Turner, Kearney, Smith, Fedor, Hughes, Schuler, Goodman, Schuring, Gibbs, Wilson.

To enact section 5.2239 of the Revised Code to designate the last week of May as "Ohio Turfgrass Week, was considered the third time.

The question being, "Shall the bill, **Am. S. B. No. 51**, pass?"

The yeas and nays were taken and resulted - yeas 30, nays 0, as follows:

Those who voted in the affirmative were: Senators

Cafaro	Carey	Cates	Faber
Fedor	Gibbs	Gillmor	Goodman
Grendell	Hughes	Husted	Jones
Kearney	Miller D	Miller R	Morano
Niehaus	Patton	Sawyer	Schaffer
Schiavoni	Schuring	Seitz	Smith
Stewart	Turner	Wagoner	Widener
Wilson			Harris-30.

So the bill passed.

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

Senator Morano moved to amend the title as follows:

Add the names: "Cafaro, Carey, Gillmor, Harris, Miller, R., Patton, Schaffer, Wagoner, Jones, Schiavoni."

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

The motion was agreed to and the title so amended.

S. B. No. 96-Senator Hughes.

Cosponsors: Senators Patton, Seitz, Miller, D., Wagoner, Morano, Gibbs, Strahorn, Schiavoni, Goodman, Gillmor, Schuring.

To enact section 5.2265 of the Revised Code to designate May as "ALS Awareness Month, was considered the third time.

The question being, "Shall the bill, **S. B. No. 96**, pass?"

The yeas and nays were taken and resulted - yeas 30, nays 0, as follows:

Those who voted in the affirmative were: Senators

Cafaro	Carey	Cates	Faber
Fedor	Gibbs	Gillmor	Goodman
Grendell	Hughes	Husted	Jones
Kearney	Miller D	Miller R	Morano
Niehaus	Patton	Sawyer	Schaffer
Schiavoni	Schuring	Seitz	Smith
Stewart	Turner	Wagoner	Widener
Wilson			Harris-30.

So the bill passed.

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

Senator Hughes moved to amend the title as follows:

Add the names: "Cafaro, Carey, Cates, Faber, Fedor, Grendell, Hughes, Husted, Kearney, Sawyer, Schaffer, Smith, Turner, Widener, Wilson, Harris, Miller, R., Stewart, Jones."

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

The motion was agreed to and the title so amended.

Sub. S. B. No. 131-Senators Gillmor, Cafaro.

Cosponsors: Senators Widener, Grendell, Schuring, Gibbs, Carey, Faber, Morano.

To amend sections 125.04 and 5513.02 and to enact sections 125.091,

125.092, 125.093, 3345.691, and 3345.692 of the Revised Code to require that the Director of Administrative Services establish a program that ensures that supplies composed of biobased products are purchased by the Department of Administrative Services, other state agencies, and state institutions of higher education, was considered the third time.

The question being, "Shall the bill, **Sub. S. B. No. 131**, pass?"

Senator Cafaro moved to amend as follows:

In line 180, delete everything after "means"

Delete line 181 and insert "any of the following:

(a) If a similar product is not produced in this state and is not biobased, the price of the biobased product exceeds the price of the similar product by more than five per cent.

(b) If a similar product is produced in this state and is not biobased, the price of the biobased product is greater than the price of the similar product.

(c) If a similar product is not produced in this state and is biobased, the price of the biobased product exceeds the price of the similar product by a percentage that is determined by the director in accordance with rules adopted under this section, provided that the percentage shall not exceed five per cent.

(d) If a similar product is produced in this state and is biobased, the price of the biobased product exceeds the price of the similar product by a percentage that is determined by the director in accordance with rules adopted under this section, provided that the percentage shall not exceed five per cent.

If the director determines a percentage that is less than five per cent for the purpose of division (C)(3)(c) or (d) of this section, the director shall give strong consideration to the benefits of expanding the use of biobased products."

In line 198, after "(3)" insert "Procedures and guidelines to be used by the director in determining percentages for purposes of divisions (C)(3)(c) and (d) of this section;

(4)"

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

The motion was agreed to.

The question recurred, "Shall the bill, **Sub. S. B. No. 131**, pass?"

The yeas and nays were taken and resulted - yeas 30, nays 0, as follows:

Those who voted in the affirmative were: Senators

Cafaro

Carey

Cates

Faber

Fedor	Gibbs	Gillmor	Goodman
Grendell	Hughes	Husted	Jones
Kearney	Miller D	Miller R	Morano
Niehaus	Patton	Sawyer	Schaffer
Schiavoni	Schuring	Seitz	Smith
Stewart	Turner	Wagoner	Widener
Wilson			Harris-30.

So the bill passed.

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

Senator Gillmor moved to amend the title as follows:

Add the names: "Fedor, Goodman, Harris, Hughes, Kearney, Miller, D., Miller, R., Niehaus, Patton, Sawyer, Schaffer, Seitz, Smith, Stewart, Wagoner, Schiavoni."

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

The motion was agreed to and the title so amended.

MOTIONS

Senator Wagoner moved that Senators absent the week of Sunday, September 27, 2009, be excused, so long as a written explanation is on file with the Clerk pursuant to Senate Rule No. 17.

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

The motion was agreed to.

INTRODUCTION AND FIRST CONSIDERATION OF BILLS

The following bills were introduced and considered the first time:

S. B. No. 174-Senators Fedor, Wagoner.

Cosponsors: Senators Miller, D., Miller, R., Turner, Schiavoni, Morano, Wilson, Sawyer, Goodman, Gibbs, Patton, Gillmor, Schuring, Smith, Strahorn, Cafaro, Kearney, Hughes.

To amend section 4511.27 of the Revised Code to establish a safe passing distance between a motor vehicle and a bicycle.

S. B. No. 175-Senator Cates.

Cosponsors: Senators Buehrer, Grendell, Schaffer, Faber.

To amend section 3318.31 of the Revised Code to transfer appointment of the executive director of the Ohio School Facilities Commission from the Commission to the Governor, with the advice and consent of the Senate.

S. B. No. 176-Senator Fedor.

Cosponsors: Senators Miller, D., Kearney, Turner, Morano, Cafaro, Strahorn, Miller, R., Wilson, Schiavoni, Sawyer, Smith.

To amend sections 2907.29, 3313.60, 3313.6011, 3314.03, 3326.11, and 4729.16; to enact sections 1751.69, 3701.048, 3701.137, 3727.60, 3727.601, 3727.602, 3923.85, 4729.43, and 4729.44; and to repeal section 3701.046 of the Revised Code regarding assistance for pregnancy prevention.

S. B. No. 177-Senators Seitz, Cates.

Cosponsors: Senators Grendell, Hughes, Patton, Goodman, Niehaus, Smith, Turner, Sawyer.

To amend section 5747.01 of the Revised Code and to amend Section 265.10 of Am. Sub. H.B. 1 of the 128th General Assembly to partially decouple Ohio law from recent federal tax law changes, and to amend the version of section 5747.01 of the Revised Code that is scheduled to take effect January 1, 2010, to continue the provisions of this act on and after that effective date, and to make appropriations.

OFFERING OF RESOLUTIONS

Senators Buehrer and Coughlin offered the following concurrent resolution:

S. C. R. No. 20-Senators Buehrer, Coughlin.

To reaffirm the sister-state relationship that the State of Ohio has with Taiwan Province of the Republic of China.

The question being, "Shall the concurrent resolution, **S. C. R. No. 20**, be adopted?"

On the motion of Senator Niehaus, **S. C. R. No. 20**, was referred to the Committee on Reference.

On the motion of Senator Niehaus, the Senate adjourned until Wednesday, September 30, 2009 at 1:30 p.m.

Attest:

VINCENT L. KEERAN,
Clerk.