

**FIFTY-NINTH DAY - APRIL 5, 2007****LEGISLATIVE JOURNAL****ONE HUNDREDTH LEGISLATURE  
FIRST SESSION****FIFTY-NINTH DAY**

Legislative Chamber, Lincoln, Nebraska  
Thursday, April 5, 2007

**PRAYER**

The prayer was offered by Senator Hudkins.

**ROLL CALL**

Pursuant to adjournment, the Legislature met at 9:00 a.m., Speaker Flood presiding.

The roll was called and all members were present except Senators Ashford, Cornett, Pedersen, and White who were excused; and Senator Raikes who was excused until he arrives.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the fifty-eighth day was approved.

**COMMITTEE REPORTS****Enrollment and Review**

**LEGISLATIVE BILL 236.** Placed on Select File - ER8067.  
ER8067

- 1 1. Strike the original sections and all amendments
- 2 thereto and insert the following new sections:
- 3 Section 1. For purposes of sections 1 to 4 of this act:
- 4 (1) Activities of daily living has the definition found
- 5 in section 71-6602;
- 6 (2) Attendant services means services provided to
- 7 nonmedically fragile persons, including hands-on assistance
- 8 with activities of daily living, transfer, grooming, medication
- 9 reminders, and similar activities;
- 10 (3) Companion services means the provision of
- 11 companionship and assistance with letter writing, reading, and
- 12 similar activities;
- 13 (4) Homemaker services means assistance with household
- 14 tasks, including, but not limited to, housekeeping, personal
- 15 laundry, shopping, incidental transportation, and meals;

16 (5) In-home personal services means attendant services,  
17 companion services, and homemaker services that do not require  
18 the exercise of medical or nursing judgment provided to a person  
19 in his or her residence to enable the person to remain safe and  
20 comfortable in such residence;

21 (6) In-home personal services agency means an entity  
22 that provides or offers to provide in-home personal services  
23 for compensation by employees of the agency or by persons with  
1 whom the agency has contracted to provide such services. In-home  
2 personal services agency does not include a local public health  
3 department as defined in section 71-1626, a health care facility  
4 as defined in section 71-413, a health care service as defined in  
5 section 71-415, programs supported by the federal Corporation for  
6 National and Community Service, an unlicensed home care registry or  
7 similar entity that screens and schedules independent contractors  
8 as caregivers for persons, or an agency that provides only  
9 housecleaning services. A home health agency may be an in-home  
10 personal services agency; and

11 (7) In-home personal services worker means a person who  
12 meets the requirements of section 2 of this act and provides  
13 in-home personal services.

14 Sec. 2. An in-home personal services worker:

15 (1) Shall be at least eighteen years of age;

16 (2) Shall have good moral character;

17 (3) Shall not have been convicted of a crime under the  
18 laws of Nebraska or another jurisdiction, the penalty for which is  
19 imprisonment for a period of more than one year and which crime is  
20 rationally related to the person's fitness or capacity to act as an  
21 in-home personal services worker;

22 (4) Shall have no adverse findings on the Adult  
23 Protective Services Central Registry, the central register created  
24 in section 28-718, the Medication Aide Registry, the Nurse Aide  
25 Registry, or the central registry maintained by the sex offender  
26 registration and community notification division of the Nebraska  
27 State Patrol pursuant to section 29-4004;

1 (5) Shall be able to speak and understand the English  
2 language or the language of the person for whom he or she is  
3 providing in-home personal services; and

4 (6) Shall have training sufficient to provide the  
5 requisite level of in-home personal services offered.

6 Sec. 3. An in-home personal services agency shall employ  
7 or contract with only persons who meet the requirements of section  
8 2 of this act to provide in-home personal services. The in-home  
9 personal services agency shall perform or cause to be performed a  
10 criminal history record information check on each in-home personal  
11 services worker and a check of his or her driving record as  
12 maintained by the Department of Motor Vehicles or by any other  
13 state which has issued an operator's license to the in-home  
14 personal services worker, when driving is a service provided by the

15 in-home personal services worker, and shall maintain documentation  
 16 of such checks in its records for inspection at its place of  
 17 business.

18 Sec. 4. Sections 1 to 3 of this act do not apply to  
 19 the performance of health maintenance activities by designated care  
 20 aides pursuant to section 71-1,132.30 or to persons who provide  
 21 personal assistant services, respite care or habilitation services,  
 22 or aged and disabled services.

23 Sec. 5. Section 71-415, Reissue Revised Statutes of  
 24 Nebraska, is amended to read:

25 71-415 Health care service means an adult day service, a  
 26 home health agency, a hospice or hospice service, or a respite care  
 27 service. Health care service does not include an in-home personal  
 1 services agency as defined in section 1 of this act.

2 Sec. 6. Section 71-6720, Reissue Revised Statutes of  
 3 Nebraska, is amended to read:

4 71-6720 (1) The purposes of the Medication Aide Act  
 5 are to ensure the health, safety, and welfare of the public by  
 6 providing for the accurate, cost-effective, efficient, and safe  
 7 utilization of medication aides to assist in the administration of  
 8 medications by ~~(4)-(a)~~ competent individuals, ~~(2)-(b)~~ caretakers  
 9 who are parents, foster parents, family, friends or legal  
 10 guardians, and ~~(3)-(c)~~ licensed health care professionals.

11 (2) The act applies to all settings in which medications  
 12 are administered except the home, unless the in-home administration  
 13 of medication is. ~~The act does apply to medication administered~~  
 14 ~~in the home when~~ provided through a licensed home health agency or  
 15 licensed or certified home and community-based provider.

16 (3) The act does not apply to the provision of reminders  
 17 to persons to self-administer medication or assistance to persons  
 18 in the delivery of nontherapeutic topical applications by in-home  
 19 personal services workers. For purposes of this subsection, in-home  
 20 personal services worker has the definition found in section 1 of  
 21 this act.

22 Sec. 7. Original sections 71-415 and 71-6720, Reissue  
 23 Revised Statutes of Nebraska, are repealed.

24 2. On page 1, line 2, strike "71-6615" and insert  
 25 "71-415"; and in line 3 strike "care".

**LEGISLATIVE BILL 461.** Placed on Select File - ER8066.  
 ER8066

- 1 1. On page 1, strike beginning with "placements" in
- 2 line 1 through the semicolon in line 2 and insert "; to state
- 3 legislative intent relating to foster care placements;".

(Signed) Amanda McGill, Chairperson

**MESSAGES FROM THE GOVERNOR**

April 5, 2007

Patrick J. O'Donnell  
Clerk of the Legislature  
State Capitol, Room 2018  
Lincoln, NE 68509

Dear Mr. O'Donnell:

Engrossed Legislative Bills 25, 34, 67, 136, 143, 160, 192, 203, 223, 286, 292, 292A, 349, 374e, 464, 497e, 568e, 638, 661e, and 681 were received in my office on March 30, 2007.

I signed these bills on April 4, 2007, and delivered them to the Secretary of State on April 5, 2007.

Sincerely,  
(Signed) Dave Heineman  
Governor

April 5, 2007

Mr. President, Mr. Speaker, and  
Members of the Legislature  
State Capitol  
Lincoln, NE 68509

Dear Mr. President and Members of the Legislature:

I am returning LB 106 without my signature and with my objections.

LB 106 divides current tobacco products into those defined as smoking tobacco and those defined as tobacco products. The tax on tobacco products is changed from an ad valorem method to a weight-based method at the rate of \$1.05 per ounce.

As advanced by the Revenue Committee, LB 106 would have provided for the equitable treatment of tobacco products. I could have supported the bill in that form. However, in its final form, LB 106 has now become an unnecessary tax increase.

In my view, this bill is a tax increase not based on sound public policy but rather on a desire to increase the tax on tobacco products. Further consideration should be given as to how such a dramatic increase in the tax affects the ultimate consumer.

For these reasons, I urge you to sustain my veto of the legislation.

Sincerely,  
(Signed) Dave Heineman  
Governor

### **REPORT OF REGISTERED LOBBYISTS**

Following is a list of all lobbyists who have registered as of April 4, 2007, in accordance with Section 49-1481, Revised Statutes of Nebraska. Additional lobbyists who have registered will be filed weekly.

(Signed) Patrick J. O'Donnell  
Clerk of the Legislature

Keigher/Rasmussen & Associates, LLC  
Class I's United  
(Withdrawn 04/02/2007)

Kesari, Dimitri N.  
National Right to Work Committee

Lamb, Amy  
Occupational Therapy Association, Nebraska

Sedlacek, Ronald J.  
Wal-Mart Stores, Inc.

Zohner, Judy  
Farm Bureau Federation, Nebraska  
(Withdrawn 03/30/2007)

### **REPORTS**

The following reports were received by the Legislature:

#### **Health and Human Services System**

Director's Report on the Audiology Speech-Language Proposal for a  
Change in Scope of Practice  
Director's Report on the Proposal for Licensing Perfusionists

#### **Investment Council**

2006 Annual Report

#### **Public Service Commission**

Broadband Survey

**BILLS ON FINAL READING**

The following bill was read and put upon final passage:

**LEGISLATIVE BILL 537.**

A BILL FOR AN ACT relating to motor fuels; to amend section 66-741, Reissue Revised Statutes of Nebraska; to authorize the collection and dissemination of motor fuel tax on land held in trust for a Nebraska-based federally recognized Indian tribe; and to repeal the original section.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 34:

Adams	Dubas	Harms	Kruse	Pahls
Aguilar	Erdman	Heidemann	Langemeier	Pirsch
Avery	Fischer	Howard	Lathrop	Preister
Burling	Friend	Janssen	McDonald	Schimek
Carlson	Fulton	Johnson	McGill	Synowiecki
Chambers	Gay	Karpisek	Mines	Wightman
Christensen	Hansen	Kopplin	Nantkes	

Voting in the negative, 4:

Dierks	Flood	Louden	Rogert
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Present and not voting, 6:

Engel	Nelson	Stuthman
Hudkins	Pankonin	Wallman

Excused and not voting, 5:

Ashford	Cornett	Pedersen	Raikes	White
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A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

**Dispense With Reading at Large**

Pursuant to Rule 6, Section 8, the Legislature approved the dispensing of the reading at large of LB 636 with 35 ayes, 3 nays, 6 present and not voting, and 5 excused and not voting.

The following bill was put upon final passage:

**LEGISLATIVE BILL 636.**

A BILL FOR AN ACT relating to public entities; to amend section 13-801, Reissue Revised Statutes of Nebraska, and sections 18-2442 and 70-637, Revised Statutes Cumulative Supplement, 2006; to provide bidding requirements for certain entities; to exempt specified contracts with electric utilities or electric utility alliances from certain bidding requirements; to harmonize provisions; and to repeal the original sections.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?'"

Voting in the affirmative, 42:

Adams	Erdman	Howard	Louden	Preister
Aguilar	Fischer	Hudkins	McDonald	Rogert
Avery	Flood	Janssen	McGill	Stuthman
Burling	Friend	Johnson	Mines	Synowiecki
Carlson	Fulton	Karpisek	Nantkes	Wallman
Christensen	Gay	Kopplin	Nelson	Wightman
Dierks	Hansen	Kruse	Pahls	
Dubas	Harms	Langemeier	Pankonin	
Engel	Heidemann	Lathrop	Pirsch	

Voting in the negative, 1:

Chambers

Present and not voting, 1:

Schimek

Excused and not voting, 5:

Ashford	Cornett	Pedersen	Raikes	White
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A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

The following bill was read and put upon final passage:

**LEGISLATIVE BILL 677.** With Emergency.

A BILL FOR AN ACT relating to agriculture; to amend section 54-2423, Revised Statutes Cumulative Supplement, 2006; to change inspection requirements and late fees under the Livestock Waste Management Act; to repeal the original section; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the

emergency clause attached?" "

Voting in the affirmative, 43:

Adams	Engel	Howard	Louden	Preister
Aguilar	Erdman	Hudkins	McDonald	Raikes
Avery	Fischer	Janssen	McGill	Rogert
Burling	Flood	Johnson	Mines	Schimek
Carlson	Friend	Karpisek	Nantkes	Stuthman
Chambers	Gay	Kopplin	Nelson	Wallman
Christensen	Hansen	Kruse	Pahls	Wightman
Dierks	Harms	Langemeier	Pankonin	
Dubas	Heidemann	Lathrop	Pirsch	

Voting in the negative, 0.

Present and not voting, 2:

Fulton            Synowiecki

Excused and not voting, 4:

Ashford            Cornett            Pedersen            White

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

### **SPEAKER SIGNED**

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LBs 537, 636, and 677.

### **SELECT FILE**

**LEGISLATIVE BILL 198.** ER8057, found on page 926, was adopted.

Senator Fulton renewed the Fulton-Schimek amendment, AM801, found on page 917.

### **SENATOR LANGEMEIER PRESIDING**

The Fulton-Schimek amendment was adopted with 31 ayes, 0 nays, 13 present and not voting, and 5 excused and not voting.

Senator Erdman offered the following amendment:

FA61

Strike the Schimek amendment (AM705).

Senator Erdman withdrew his amendment.

Advanced to E & R for engrossment.

**LEGISLATIVE BILL 338.** ER8058, found on page 970, was adopted.

Advanced to E & R for engrossment.

**LEGISLATIVE BILL 232.** ER8060, found on page 1025, was adopted.

Senator Dubas renewed her amendment, AM884, found on page 1053.

The Dubas amendment was adopted with 27 ayes, 0 nays, 18 present and not voting, and 4 excused and not voting.

Advanced to E & R for engrossment.

**LEGISLATIVE BILL 502.** ER8061, found on page 1027, was adopted.

Advanced to E & R for engrossment.

**LEGISLATIVE BILL 562.** ER8065, found on page 1077, was adopted.

Advanced to E & R for engrossment.

**LEGISLATIVE BILL 457.** Senator Hansen renewed his amendment, AM898, found on page 1047.

The Hansen amendment was adopted with 36 ayes, 0 nays, 8 present and not voting, and 5 excused and not voting.

Advanced to E & R for engrossment.

**LEGISLATIVE BILL 415.** ER8063, found on page 1077, was adopted.

Senator Harms renewed his amendment, AM901, found on page 1087.

Senator Chambers offered the following amendment to the Harms amendment:

FA62

Amend AM901 P. 1, in lines 6, 10, 14, 18 strike "offense" and insert "law".

### **SENATOR SCHIMEK PRESIDING**

The Chambers amendment was adopted with 28 ayes, 0 nays, 15 present and not voting, and 6 excused and not voting.

The Harms amendment, as amended, was adopted with 27 ayes, 1 nay, 15

present and not voting, and 6 excused and not voting.

Senator Erdman offered the following amendment:

AM946

(Amendments to E & R amendments, ER8063)

- 1 1. Strike sections 1 to 3 and 5.
- 2 2. On page 4, strike lines 20 through 22.
- 3 3. On page 8, lines 3 through 6 and 24 through 27, strike
- 4 the new matter and reinstate the stricken matter.
- 5 4. Renumber the remaining sections and correct the
- 6 repealer section accordingly.

Pending.

### **PRESENTED TO THE GOVERNOR**

Presented to the Governor on April 5, 2007, at 9:32 a.m. were the following:  
LBs 537, 636, and 677e.

(Signed) Jamie Kruse  
Clerk of the Legislature's Office

### **MESSAGES FROM THE GOVERNOR**

April 2, 2007

Mr. President, Speaker Flood  
and Members of the Legislature  
State Capitol  
Lincoln, NE 68509

Dear Mr. President, Speaker Flood and Senators:

Contingent upon your approval, the following individual is appointed as a member of the Community Corrections Council:

Lloyd Lee Kimzey Jr., 7996 N. Sandhill Road, North Platte NE 69101

The aforementioned appointee is respectfully submitted for your consideration. Copies of the appointment certificate and application form are attached for your review.

Sincerely,  
(Signed) Dave Heineman  
Governor

Enclosures

April 3, 2007

Mr. President, Speaker Flood  
and Members of the Legislature  
State Capitol  
Lincoln, NE 68509

Dear Mr. President, Speaker Flood and Senators:

Contingent upon your approval, the following individual is appointed as a member of the Accountability and Disclosure Commission:

Paul Hosford, 966 South 4th Street, Albion NE 68620

The aforementioned appointee is respectfully submitted for your consideration. Copies of the appointment certificate and application form are attached for your review.

Sincerely,  
(Signed) Dave Heineman  
Governor

Enclosures

### **COMMITTEE REPORT** **Natural Resources**

The Natural Resources Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

John Campbell - Nebraska Environmental Trust Board  
Vincent Kramper - Nebraska Environmental Trust Board  
Sherry Vinton - Nebraska Environmental Trust Board

VOTE: Aye: Senators Carlson, Christensen, Dubas, Fischer, Hudkins, Kopplin, Loudon, Wallman. Nay: None. Absent: None.

(Signed) LeRoy Loudon, Chairperson

### **BILLS ON FIRST READING**

The following bills were read for the first time by title:

**LEGISLATIVE BILL 82A.** Introduced by Synowiecki, 7.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 82, One Hundredth Legislature, First Session, 2007.

**LEGISLATIVE BILL 31A.** Introduced by Nantkes, 46.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 31, One Hundredth Legislature, First Session, 2007.

### SELECT FILE

**LEGISLATIVE BILL 415.** The Erdman amendment, AM946, found in this day's Journal, was renewed.

The Erdman amendment lost with 10 ayes, 15 nays, 15 present and not voting, and 9 excused and not voting.

Senator Chambers requested a machine vote on the advancement of the bill.

Senator Erdman moved for a call of the house. The motion prevailed with 26 ayes, 0 nays, and 23 not voting.

Advanced to E & R for engrossment with 26 ayes, 6 nays, 11 present and not voting, and 6 excused and not voting.

**LEGISLATIVE BILL 415A.** Advanced to E & R for engrossment.

The Chair declared the call raised.

### REFERENCE COMMITTEE REPORT

The Legislative Council Executive Board submits the following report:

Hosford, Paul - Accountability and Disclosure Commission - Government, Military and Veterans Affairs

Kimzey, Lloyd Lee, Jr. - Community Corrections Council - Judiciary

(Signed) Pat Engel, Chairperson  
Legislative Council, Executive Board

### AMENDMENTS - Print in Journal

Senator McDonald filed the following amendment to LB 578:  
AM892

(Amendments to AM573)

- 1 1. Insert the following new section:
- 2 Sec. 3. Section 53-169.01, Reissue Revised Statutes of
- 3 Nebraska, is amended to read:
- 4 53-169.01 No manufacturer of alcoholic liquor holding a
- 5 manufacturer's license under section 53-123.01 and no manufacturer
- 6 of alcoholic liquor outside this state manufacturing alcoholic

7 liquor, except beer, ~~for distribution and sale within this~~  
 8 ~~state~~ shall, directly or indirectly, as owner or part owner,  
 9 or through a subsidiary or affiliate, or by any officer, director,  
 10 or employee thereof, or by stock ownership, interlocking directors,  
 11 trusteeship, loan, mortgage, or lien on any personal or real  
 12 property, or as guarantor, endorser, or surety, be interested in  
 13 the ownership, conduct, operation, or management of any alcoholic  
 14 liquor wholesaler holding an alcoholic liquor wholesale license,  
 15 except beer, under section 53-123.02 unless such interest in the  
 16 licensed wholesaler was acquired or became effective prior to  
 17 January 1, 2007.

18 No manufacturer of alcoholic liquor holding a  
 19 manufacturer's license under section 53-123.01 and no manufacturer  
 20 of alcoholic liquor outside this state manufacturing alcoholic  
 21 liquor, except beer, ~~for distribution and sale within this state~~  
 22 shall be interested directly or indirectly, as lessor or lessee, as  
 1 owner or part owner, or through a subsidiary or affiliate, or by  
 2 any officer, director, or employee thereof, or by stock ownership,  
 3 interlocking directors, or trusteeship in the premises upon which  
 4 the place of business of an alcoholic liquor wholesaler holding  
 5 an alcoholic liquor wholesale license, except beer, under section  
 6 53-123.02 is located, established, conducted, or operated in whole  
 7 or in part unless such interest was acquired or became effective  
 8 prior to April 17, 1947.

9 2. On page 1, line 14, after "Original" insert "section  
 10 53-169.01, Reissue Revised Statutes of Nebraska, and"; and in line  
 11 14 strike "is" and insert "are".

12 3. Renumber the remaining section accordingly.

Senators Mines, Chambers, Erdman, and Fulton filed the following  
 amendment to LB 12:  
 AM948

(Amendments to Final Reading copy)

- 1 1. On page 3, strike lines 9 to 15, show the old matter
- 2 as stricken, and insert the following new subsection:
- 3 "(3)(a) Except as otherwise provided in this subsection,
- 4 the annual license fee shall be determined according to the
- 5 following fee schedule based upon the daily average number of dogs
- 6 or cats housed by the licensee over the previous annual licensure
- 7 period:
- 8 (i) Ten or fewer dogs or cats, one hundred fifty dollars;
- 9 (ii) Eleven to fifty dogs or cats, two hundred dollars;
- 10 and
- 11 (iii) More than fifty dogs or cats, two hundred fifty
- 12 dollars.
- 13 (b) The initial license fee for any person required to
- 14 be licensed pursuant to the act shall be one hundred twenty-five
- 15 dollars.
- 16 (c) The annual license fee for a licensee that does not

17 house dogs or cats shall be one hundred fifty dollars.  
 18 (d) The fees charged under this subsection may be  
 19 increased or decreased by the director after a public hearing  
 20 is held outlining the reason for any proposed change in the fee.  
 21 The maximum fee shall not exceed three hundred fifty dollars."

Senator Christensen filed the following amendment to LB 701:  
 FA64

Amend AM938 On pg 1 line 19 strike 2009 and insert 2010

### **MOTION - Print in Journal**

Senator Mines filed the following motion to LB 395:  
 Bracket LB 395 to May 30, 2007.

### **AMENDMENT - Print in Journal**

Senator Johnson filed the following amendment to LB 395:  
 AM939

(Amendments to Final Reading copy)

- 1 1. Strike sections 16 and 17.
- 2 2. On page 1, line 3, strike "operative dates" and insert
- 3 "an operative date".
- 4 3. On page 3, line 1, strike "21" and insert "19".
- 5 4. On page 5, strike beginning with "sections" in line 9
- 6 through "17" in line 10 and insert "section 15".
- 7 5. On page 9, strike beginning with "Sections" in line 16
- 8 through "this" in line 17 and insert "This"; and strike beginning
- 9 with "Sections" in line 18 through line 19.
- 10 6. Renumber the remaining sections accordingly.

### **UNANIMOUS CONSENT - Add Cointroducer**

Senator Langemeier asked unanimous consent to add his name as  
 cointroducer to LB 701. No objections. So ordered.

### **VISITORS**

Visitors to the Chamber were Senator Langemeier's sister and nephew, Amy and Zach Murrell, from Omaha; 40 fourth-grade students and teachers from Golden Hill Elementary, Bellevue; Luo Shuyong Deputy Director, Hunan Provincial People's Congress General Office, China; Sharon and Rachel Vetter from Norfolk; 5 nursing students from Creighton University, Omaha and Minden; 48 fourth-grade students from Park Elementary, Kearney; and members of The Rainbow Center from Columbus.

The Doctor of the Day was Dr. Preston Renshaw from O'Neill.

**ADJOURNMENT**

At 12:04 p.m., on a motion by Senator Synowiecki, the Legislature adjourned until 10:00 a.m., Tuesday, April 10, 2007.

Patrick J. O'Donnell  
Clerk of the Legislature

