



Journal of the American Society of Legislative Clerks and Secretaries

Volume 27

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Journal of the American Society of Legislative Clerks and Secretaries

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INFORMATION FOR AUTHORS

The editors of the *Journal of the American Society of Legislative Clerks and Secretaries* welcomes manuscripts which would be of interest to our members and legislative staff, including topics such as parliamentary procedures, precedent, management, and technology. Articles must be of a general interest to the overall membership.

Contributions will be accepted for consideration from members of the American Society of Legislative Clerks and Secretaries, members of other National Conference of State Legislatures staff sections, and professionals in related fields.

All articles submitted for consideration will undergo a review process. When the Editorial Board has reviewed a manuscript, the author(s) will be notified of acceptance, rejection or need for revision of work.

STYLE AND FORMAT

Articles should follow a format consistent with professional work, whether it is in the style of the Chicago Manual, the MLA, or APA. Articles should be submitted in MS Word, single spaced with normal margins.

All references should be numbered as footnotes in the order in which they are cited within the text. Accuracy of the content and correct citation is expected of the author. Specialized jargon should be avoided as readers will skip material they do not understand. Charts or graphics which may assist readers in better understanding the article's content are encouraged for inclusion.

SUBMISSION OF ARTICLES

Articles for the 2023 Journal should be submitted electronically, not later than September 1, to the Chair:

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Inquiries from readers and potential authors are encouraged. You may contact the Chair by telephone at (916) 651-4171 or by email at Heshani.Wijemanne@sen.ca.gov.

Letters to the editor are welcomed and may be published at the conclusion of the journal to provide a forum for discussion.



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A Note from the Editors

Small but mighty.

While the Professional Journal may not be the most sought-after committee, it is definitely an important one. When you have a moment, after you read this current volume, we suggest you look at the past volumes available on the website. There you will see the subtle (and sometimes not-so-subtle) evolution of legislative procedure, as well as its continuity or stagnation (depending on how you look at it). You will read about technological innovation over time, the legal conundrums of our legislative counterparts, and the way we continue to persevere through unique and unprecedented circumstances. You will read about what matters most to us.

There is an open invitation to all members of the society who would like to write and publish an article. It is important that we continue to memorialize our experiences through this publication. The written word will always stand the test of time.

Thank you to those of you who have contributed to this publication. It has been a privilege to work on Volume 27 of the *Journal of the American Society of Legislative Clerks and Secretaries* and to continue this legacy.

We hope you enjoy reading this volume as much as we enjoyed creating it for you.

Sincerely,

The Editors

Time for a Change

By: Megan Martin, Secretary-Parliamentarian of the Pennsylvania Senate



The year is 2012. Facebook announced it had 1 billion active users, the spacecraft *Curiosity* landed on Mars, Canada stopped production of the penny, Apple introduced the iPhone 5, and natural and organic wines were trending.

In contrast, it is June 2012 in the Office of the Secretary of the Pennsylvania Senate (SecSen), and although the first woman to hold this esteemed position since its creation more than 100 years ago is just unanimously elected by the Senators, Senate committee meetings are being advertised using

carbon paper, Senate Journals are being created with WordPerfect, and Senate Session is being recorded on cassette tapes.

Clearly, it was time for a change.

I have always believed that I was the right person at the right time to serve as the Pennsylvania Senate's Secretary-Parliamentarian for the past decade. I came here from the outside with fresh ideas and new perspectives, all of which enabled and empowered me to work collaboratively to modernize our legislative operations. Importantly, I had the tremendous benefit of the support of both Presidents Pro Tempore (Senator Joe Scarnati and Senator Jake Corman) in all these important endeavors. I am proud of the legacy I am leaving behind for future Secretary-Parliamentarians and their teams, and for the Members and staff of the Senate.

Thanks to the dedication of my SecSen legislative team, and the ingenuity and skill of the General Assembly's in-house information technology (IT) Agency – the Legislative Data Processing Committee (LDP) along with the Senate's in-house IT department – the Pennsylvania Senate has moved into the 21st century! In so doing, we led the way – and made history in the process -- in maintaining continuity of our government during the worldwide pandemic!

This article pays homage to the innovative ideas, extraordinary efforts, and exceptional execution that resulted in the complete modernization of the legislative operations of the Pennsylvania Senate, as well as the operations of the SecSen. It was truly a team effort by all!

The modernization of the legislative process in the Pennsylvania Senate and of the operations of the SecSen was a multi-faceted endeavor.

1. We needed internal upgrading and modernization of all the legislative systems my team and the caucuses use throughout the legislative process:
 - Advertising Committee Meetings
 - Bill Introduction
 - Bill Referral
 - Bill Delivery to Committee
 - Executive Nominations
 - Journal Creation
 - Roll Call System
 - Senate Citations
 - Senate Virtual Session Desk App
 - New General Assembly Website

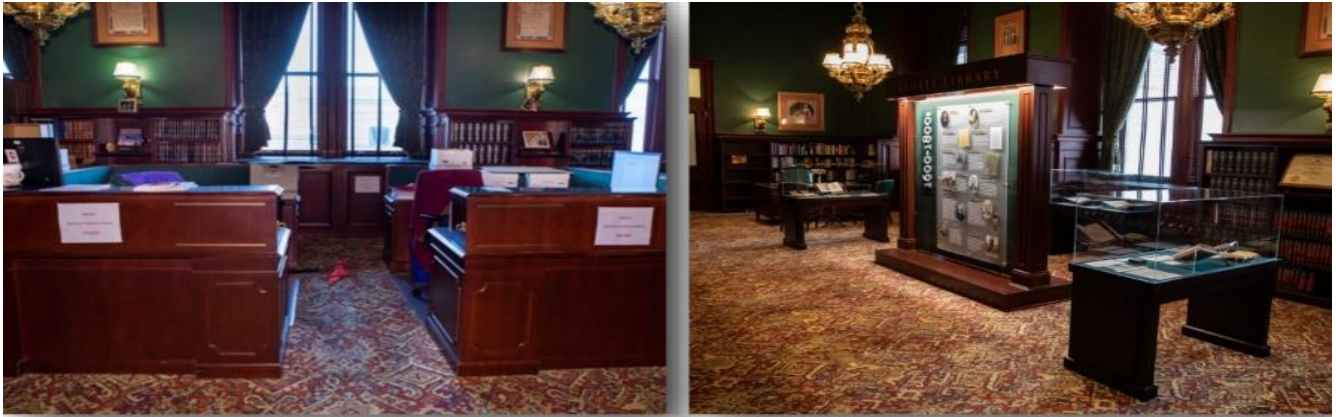


2. We needed external upgrading and modernization of our websites (in most instances, we created websites where there had been none) to improve transparency of our legislative operations to the people of Pennsylvania, and to provide civics education on not only the legislative process, but also on how our state government works:

- Created SecSen external website.
 - [Secretary of the Senate \(pasen.gov\)](https://www.pasen.gov)
- Created Capitol Tour Guide website with online tour booking
 - [Pennsylvania State Capitol - Official Site \(pacapitol.com\)](https://www.pacapitol.com)
- Created Senate Library website
 - [Library of the Senate of Pennsylvania \(pasen.gov\)](https://www.pasen.gov)
- Created [Self-Guided Capitol Tour App](#)
- Modernized the PA General Assembly [Welcome Center](#)
- Transformed the Senate Library into a [Museum Space](#) with rotating exhibits telling the story of the PA Senate, its officers and members
- Modernized the [PA Capitol Gift Shop](#)

3. And, we needed upgrading and modernization of the internal operations of the many offices under my charge:

- Created internal SecSen website
- Created internal Senate Security website
- Launched social media campaigns for the [Senate Library](#) and [Capitol Tour Guides](#) – [Facebook](#) and [Twitter](#) pages
- Held first-ever [SecSen Team Development Day & Awards](#)
- Ceremony with Keynote Address by The Honorable Tom Ridge
- Launched [The SecSen Dispatch](#), a quarterly newsletter of the SecSen



The Senate Library before (L) and after (R) its Legacy Project

Modernizing Our Legislative Operations

First things first. The first initiative upon which we embarked was digitizing the Official Reporter’s Office, which creates our most historical document and official record of Senate Session – the Senate Journal. This meant doing away with the cassette tapes and recording session digitally on our computers. This was a game-changer in the Journal-production process! We worked with our Senate IT department to make this happen, and proudly welcomed the Reporter’s Office to the 21st century!

Pitching the carbon paper. This was a must. There had to be a better, modern way to advertise our committee meetings. At my request, LDP created and helped implement an online system for the caucuses to input their meeting information, and for my legislative team to review and post in accordance with our Sunshine Act.

This was a 2-phased project:

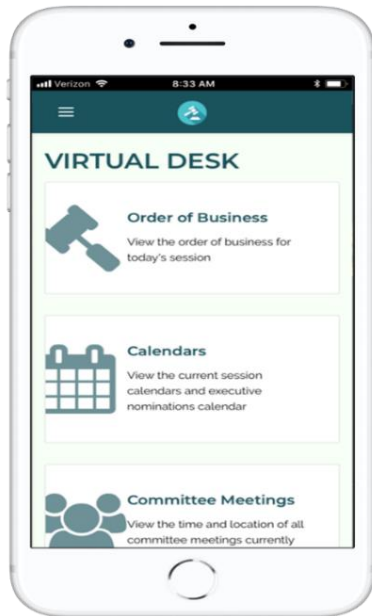
- First, we gave online registration capability to all majority committee chairs and staff for advertising their meetings taking place in the Capitol Complex. This replaced the carbon-paper registration forms that we had been using for more than 40 years.
- The second phase was online registration capability for committee meetings being held outside the Capitol Complex.

In both instances, the offices submit their information to my team and we review, verify and post the information and contact the local papers for publication of outside meetings.

Again, this was a game-changer for both my team and the caucuses, because now these meetings can be “sunshined” via email at any time, rather than just when we are in the office. Moreover, utilizing this system was especially critical during COVID-19 as we worked to maintain the continuity of our legislative operations and our state government.



Out with the Old and in with the New. For decades, paper—and lots of it—was the mainstay for Senate Session. Paper bills. Paper calendars. Paper amendments. Everything was captured on paper. Hundreds of copies of all session materials were made each session day and given to the Members.



I knew there had to be a better, modern way to capture this information and use it for session. So, I asked LDP to create a tool for our Senate Members and their staff where they could view all of the relevant information for each Senate Session day from the palm of their hand. LDP did just that and so much more!

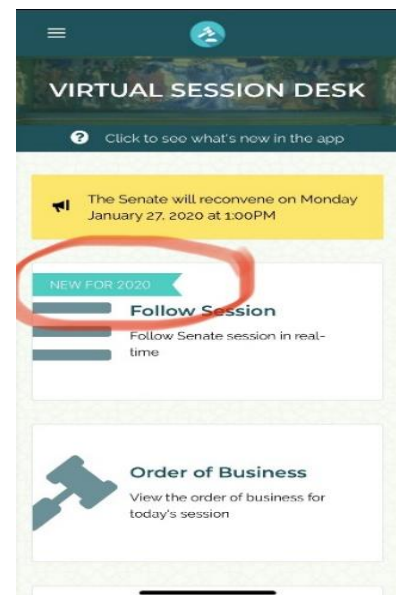
Senate Virtual Session Desk. LDP created the *Senate Virtual Session Desk Application*, which has revolutionized the way we disseminate information and documents related to session to our Members and staff.

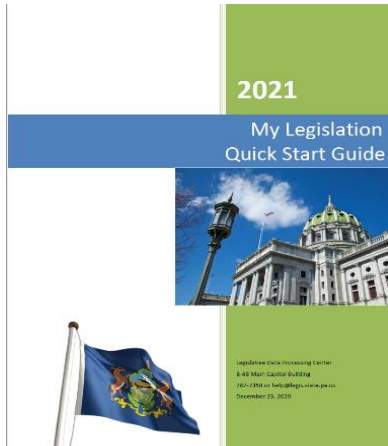
The system is customized for each Member, so that the Member can see: what bills and amendments they sponsored; what meetings they need to attend each session day; the agenda for the session day (our Order of Business); our Senate Rules; Session Calendars; schedule of Senate and House session days; committee agendas and documents; and more. Members and staff can also watch session live through the App, and follow session live on the App to see where we are in the Order of Business and what matters are before

the Body in real-time.

Digital Workflow Solutions. In addition to deploying this new technology for our session information, we also worked with LDP to create digital workflows for electronic review and delivery of bills to our Senate committees. All bills are introduced in my office, and before COVID-19 struck, the bills were introduced in-person and in-print to my office. My legislative team then hand-delivered the bills, first to the President Pro Tempore for referral to committee, and second, to the assigned committee. When COVID-19 struck, we had to devise an immediate solution for this manual process so that legislation could continue to flow and work its way through the legislative process while the Senate Members and staff worked from home throughout the global pandemic.

I would be remiss if I did not include here that we still print our bills because our Constitution requires it. We just do not print nearly as many copies for use in the Chamber! We also make the bills available online to the Members via the Virtual Session Desk and via the Senate website, and we make these available to the public on our website as well.





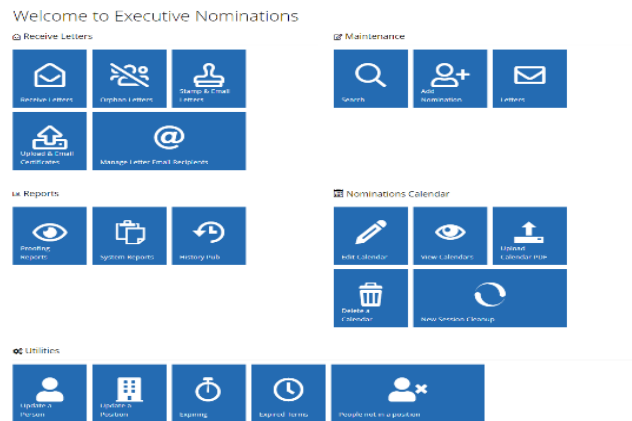
This new digital workflow for introduction, delivery, and referral of bills was the crucial precursor to LDP’s creation of another new App for the Members and staff – *My Legislation*.

My Legislation. The My Legislation App is a tool for Senators and staff to organize all of their legislative requests. The application provides a single electronic location for all of their legislation, and also allows them to easily electronically submit legislation to the Legislative Reference Bureau (LRB) for drafting, and to submit legislation to the Secretary’s office for introduction, referral, and delivery to committee. Members draft their legislation, get co-sponsors for their legislation, and submit their legislation to my office for introduction—all via this new App. We average about

1,500 bills/resolutions per two-year session, so this is a game changer in the process! Through the collaboration of my legislative team, staff from both caucuses, and the LDP, we have revolutionized these legislative processes for the Senate of Pennsylvania.

Modernizing the Executive Nominations Process.

An important constitutional duty of our Senate is confirmation of gubernatorial appointees. To modernize this process, my team worked with LDP on the creation of a digital workflow for this complex and important process. One thing that makes this accomplishment so special is that it involved my team working with the Governor’s team to make this happen. We worked collaboratively with the executive branch and came up with a system that allows them to submit nominations and related documents, and also allows my team to administer and move the nominations through the process. We average about 1,500 nominations per two-year session, so this innovative process change has been welcomed by all!



Remote Session with Zoom! With the COVID-19 crisis, I was tasked with finding a solution for the continuity of the Senate’s legislative operations. My SecSen team and I partnered with senior staff from both caucuses, our Chief Clerk, LDP, and the Senate Chamber Audio-Visual (AV) team, which resulted in the Senate of Pennsylvania holding the first-ever session with remote participation on Wednesday, March 25, 2020. We took extraordinary steps during extraordinary times to ensure full, meaningful, and transparent participation in Senate Session by all the

Members, while simultaneously complying with federal and state guidelines for social distancing to stem the spread of COVID-19.



These have been historic times in America and around the world. For more than two years, cities and

communities around the globe have been facing a pandemic and the consequences of trying to mitigate it. Pennsylvania has been no different. Our fellow Pennsylvanians have needed and expected continuity of our legislative operations despite this crisis. I am proud to report that at the Pennsylvania Senate, we met this challenge. We have had some historic legislative moments in the Senate as a result of, and in response to, COVID-19.



On Wednesday, March 18, 2020, we adopted unprecedented Rules changes via Senate Resolution 318. The purpose of these Temporary Emergency Rules was twofold: (1) to maintain continuity of the legislative operations of the Senate during a pandemic; and (2) to protect the health, safety and welfare of the residents of the Commonwealth during this crisis. These new Rules changed our quorum requirements and authorized remote participation and voting both in Senate session and committee meetings. Emergency Rules were adopted several times to extend these special provisions. Currently, we are not operating under any of these special rules.

Adopting new Rules was the first critical step, and in addition to these new Rules, we next needed new technology. Prior to the pandemic, changes to the quorum requirement and enabling remote participation in Senate session were unthinkable. But, we had to find a way to make what seemed impossible—or at the very least, daunting—possible. And, we did.

Our technology team—LDP and the Senate Chamber AV department—created a solution that would safeguard the integrity of the legislative process and simultaneously allow for **full and meaningful participation by the Members (they could remotely vote, debate, offer amendments, etc.)**. We utilized the Zoom platform in conjunction with our Senate Virtual Session Desk App that LDP created (the password to access Zoom was only located in the App), all of which was tied into the Chamber AV technology system and feeds to the public. This provided two-factor authentication and resulted in a dual level of security for the Members and the process, and provided transparency to the public of our legislative operations and actions.



To ensure full participation by the Members, LDP was present in the Chamber and controlled the microphones for the Members when they wished to speak during session. For the first roll call vote we had all the microphones on and that was not optimal—it created too much background noise for session. So, we muted all the microphones until a Member wished to be recognized. That worked. We devised a process whereby the Members reached out to me either in advance or via a special “Speak” email we had created so that the President Pro

Tempore (who was presiding in place of the Lieutenant Governor) could recognize them. My team and I also closely monitored the

multiple screens we set up in the Chamber to look for speakers. This enabled robust debate on the issues to continue throughout the pandemic.

On March 25, 2020, the Pennsylvania Senate became the first Chamber in the Nation to hold a legislative session with remote participation of Members. We “hosted” session from the Chamber in Harrisburg with myself and my team present, the Chief Clerk and her Chamber team present, and with as many Members present as possible (10/50), while the others participated remotely and safely from their homes and district offices.



There were many issues and challenges we faced to implement this new process. The legal considerations included seat of government, transparency, and quorum, to name a few.

My north star throughout the process was to fulfill our legal obligations to continue with the operation of our government, while simultaneously ensuring the legality, security, and integrity of the session and the legislative process. I am proud to report that we did just that!

This has been a historic and educational experience, and a truly collaborative, innovative effort. We soldiered-on through technical glitches, background noise, and feedback during those first remote session days. We achieved our continuity, operational, and integrity goals, which enabled the Senate to achieve significant legislative solutions for our fellow Pennsylvanians throughout this worldwide health crisis.

Automatic Speech Recognition (ASR) Technology Deployed in the Reporter’s Office. As part of the modernization of the Reporter’s Office, we have transitioned from manual stenography to the use of ASR technology to transcribe Senate Session. This has been a game-changer in the timely and accurate production of our Journals! It also gives all members of the Reporter’s Office team the opportunity to be on the floor during session, observing and learning, while simultaneously managing the new program. We contracted with Sliq Media Technologies on this exciting,

innovative, new, and modern way to produce what are our most historical documents of the institution.



Chamber Upgrades. I worked with my legislative team, LDP, Senate Institutional IT and AV, and the vendor—International Roll Call/IRC—to completely upgrade and dramatically improve our IRC Voting System. We now have electronic script capability, an electronic speakers’ list, and a new roll call

screen with images of all Senators at their desk for use by our Presiding Officer. This is a total modernization of how we conduct session.

Online Form to Request Constituent Citations. We added to our newly created internal SecSen website the ability for Members' offices to request a constituent Citation online. This has modernized and streamlined our very robust (approximately 15,000 per session) Citations process.

Online Posting of Amendments Adopted in Committee and Tabled Amendments. Together with LDP, my team and I worked to create mechanisms whereby amendments adopted in committee, as well as tabled amendments, are posted online. This is another means by which we continue to promote transparency in Senate legislative actions on the General Assembly website.

Online Posting of Senate Calendars. At my direction, LDP has posted our Senate Calendars online. This provides yet more transparency in our legislative operations.

Online Posting of Senate Journals and Histories. I worked with the Senate Library, Senate IT and LDP to add older Journals to our website to increase the public's accessibility to our Senate Journals. Previously, only Journals dating back to 1993 were available in this format. Now, we offer Journals dating back to 1949. In a similar vein, we have made Senate Histories available online; there had been none available until I pursued this endeavor. These date back to 2001 and will be added each year moving forward.

Hats off to LDP for their expertise and ingenuity and kudos to my legislative team members who worked tirelessly with LDP, providing input on their needs and expertise on the legislative process, as well as feedback on how to improve the new systems. Their input facilitated the development of these new and innovative technological solutions that have modernized the legislative operations of the Pennsylvania Senate.

It truly was a time for change in the Pennsylvania Senate. We embraced technology and the legislative operations of the Pennsylvania Senate moved into the 21st century! This is a legacy of which I am incredibly proud.

SENATE CITATION REQUEST

The form below is used to submit a citation request to the Legislative Reference Bureau (LRB). If you prefer to submit in person, you can download a printable copy of this form.
For questions regarding Senate citations, or if you have a question regarding a citation you already submitted, please contact the Legislative Reference Bureau (LRB) at 717-787-3381.

Member Information

Date of Event Date Needed in HBG Office *

Senator's Name * Additional Sponsors

Staff Contact * Staff Person's Telephone * Staff Person's Email Type of Cover Requested

A receipt will be emailed to this address.

Recipient Information



SecSen Legislative Team (L to R): Nate Sanko, Assistant Secretary Jess Rodic, Sue Zitto, Secretary-Parliamentarian Megan Martin, Ashley Haldeman, Angie Reigle, Dave Laughead, and Trey McElwee



Pennsylvania Senate President Pro Tempore Jake Corman and Secretary Martin presenting LDP Executive Director Brent McClintock with a Senate Citation honoring LDP's outstanding work and dedication to the Senate and the legislative process.





Obie Rutledge



Timothy Sekerak

Authority of Oregon’s Governor to Veto Single Items

By: Obie Rutledge, Deputy Chief Clerk, Oregon House of Representatives

Timothy Sekerak, Chief Clerk, Oregon House of Representatives

Introduction

The Oregon Constitution grants the Governor broad authority to veto legislation. The power to veto single items is limited to only *appropriation* bills. However, what does “appropriation bills” mean? Where does that authority begin, and where does it end? What happens when the executive and the legislative branches disagree on what constitutes an appropriation?

Background

Prior to 1917, the Oregon Governor had only two options when the Legislative Assembly passed a bill: they could sign the bill or they could veto the entire bill.

During the 1915 Regular Session, the Oregon Legislature adopted Senate Joint Resolution 12. The resolution was a referral to the people to amend Article V, §15 of the Oregon Constitution. The resolution proposed granting the Governor new power to veto single items in appropriation bills.

Two affirmative arguments in support of the referendum were filed in the 1916 Oregon Voter Pamphlet. The first, submitted by Senators Dan Kellaher and Sam M. Garland, stated:

The Governor must either veto the whole of the general appropriation bills and thus cause disruption of the State’s business affairs or shut his eyes to the bad items and let them pass with the good...

The second, submitted by Representatives W.W. Cardwell and D.C. Lewis, stated:

The legislative practice of tucking needless and extravagant appropriation items into the general appropriation bill has given rise to the movement for the amendment...¹

There were no negative arguments submitted.

At the 1916 General Election, the people of the State of Oregon ratified the proposed constitutional amendment, granting authority to the Governor to veto single items in appropriation bills. Article V, §15a now stated that “The Governor shall have power to veto single items in appropriation bills.”²

Initial Conflict Between the Governor and Legislature, House Bill 2377, 2019 Regular Session

During the 2019 Regular Session, the Oregon Legislative Assembly passed House Bill 2377. On August 9, 2019, Governor Kate Brown purported to veto section 6 of Enrolled House Bill 2377 without affecting the remaining sections of the bill. Section 6 of Enrolled House Bill 2377 stated, “Notwithstanding ORS 677.290, the amount of \$5,000,000 is transferred from the Oregon Medical Board Account to the General Fund for general government purposes. The transfer shall be made on May 31, 2021.” Governor Brown outlined her objection to Section 6 of House Bill 2377 in her letter to the Secretary of State, affirming her belief that the Oregon Constitution grants her the power to veto single items in House Bill 2377, calling the bill an “appropriation bill,” and believing that the provision is a single item within the bill that is distinct and severable.³

Following the line-item veto of House Bill 2377, the Speaker of the Oregon House of Representatives asked the Office of Legislative Counsel (LC) if the veto in question was within the Governor’s authority. According to LC:

Most likely no. A veto of a single section of HB 2377 is probably not permitted by the exception stated in Article V, section 15a, of the Oregon Constitution, because HB 2377 is not an appropriation bill ... We think a court is very likely to determine that HB 2377 is not an appropriation bill within the meaning of section 15a ...⁴

¹ Oregon Voters’ Pamphlet, General Election 1916.

² Oregon Constitution, Article V, §15a.

³ Governor’s letter to Sec. of State, HB 2377, Aug. 9, 2019.

⁴ LC opinion, HB 2377, Aug. 20, 2019.

Context

An appropriation is “the setting aside or designation by express direction or by implication of particular funds for the discharge of definite and specified obligations or liabilities.” *Shattuck v. Kincaid*, 31 Or. 379, 391 (1897). Pursuant to Article IX, §4 of the Oregon Constitution, an appropriation is necessary before any moneys may be expended from the treasury. Section 6 of House Bill 2377 transfers moneys from various sources to the General Fund, but it does not authorize expenditure of those moneys. Therefore, it does not make an appropriation.

In 1915, the Oregon Supreme Court decided *Evanhoff v. State Industrial Accident Commission*, 78 Or. 503 (1915). *Evanhoff* held that, despite the general rule that laws making appropriations for current expenses could not contain provisions on other subjects, a law designed to accomplish a particular purpose could appropriate the moneys necessary for that purpose. In reaching its holding, the court distinguished between an appropriation bill, a bill that is primarily an act to appropriate money to pay salaries or other current expenses, and a substantive bill that incidentally contains an appropriation. *Id.* At 519-520 (“The instant act . . . is not an appropriation bill in the sense that bills providing for general current expenses or salaries of the constitutional officers of the state are such.”).

Evanhoff suggests a contemporaneous understanding of “appropriation bill” that is similar to the definition of that term currently provided in the Form and Style Manual for Legislative Measures, which is adopted by the House and Senate by rule. The definition, in relevant part, reads:

A bill that reflects the proposed budget for the biennium that begins on July 1 of the odd-year regular session and that appropriates General Fund moneys to an agency or limits an agency’s expenditure of moneys it receives or collects from non-General Fund sources.⁵

Nowhere does House Bill 2377 appropriate moneys for the 2019 – 2021 biennium. None of the provisions in the bill are traditionally considered by the Legislative Assembly to be appropriate provisions for an appropriation bill. During each session, the Oregon Legislature passes many substantive bills that contain some type of appropriation, either a biennial appropriation of moneys necessary to accomplish the particular purpose of the bill, or a continuing appropriation similar to section 21 of House Bill 2377. This has been the practice of the legislature since the adoption of the state Constitution. If the presence of such a provision in a bill, without more, allowed the Governor to veto single items in the bill, the Governor would be granted broad authority to significantly alter policy choices made by the state legislature, representing a vast expansion of the all-or-nothing veto power described in section 15b.⁶ It is not believable that such a broad power would have gone unmentioned and undebated if anyone had understood the amendment in such a manner. *Lipscomb v. State*, 305 Or. 472, 486 (1988) (holding that section 15a, as amended in 1921, did not authorize

⁵ Form and Style Manual, 2019-2020 ed. 151.

⁶ Article V, §15b states: “Every bill which shall have passed the Legislative Assembly shall, before it becomes law, be presented to the Governor; if the Governor approve(sic), the Governor shall sign it; but if not, the Governor shall return it with written objections to that house in which it shall have originated...” This is the previously existing language in the Constitution which provides the Governor with the authority to veto non-appropriation measures in full only. Acceding to the Governor’s exercise of power to veto select items within non-appropriation measures based upon references to money therein would greatly expand the discretionary power of the Governor which is clearly limited by the Constitution’s plain language and historical custom and practice.

the Governor to veto single substantive items from bills containing emergency clauses, but only to veto the emergency clause itself).

LC outlined four options for the Legislative Assembly for the single item veto of House Bill 2377:

- I. The Legislative Assembly could bring suit and ask a court to declare the veto unconstitutional.
- II. The Legislative Assembly could treat the veto as ineffective by not taking up the veto in the next session. In this case, the vetoed section requires the transfer of certain moneys to the General Fund, an action that needs to be taken by the executive branch. Not being able to predict how the responsible officers would resolve competing interpretations of §15a, there would be significant chance that the Governor's veto would, practically speaking, be given effect.
- III. The Legislative Assembly could refuse to take up the veto and instead repeal section 6 of HB 2377 during the next legislative session. This would result in the Governor's desired practical outcome but would demonstrate that the Assembly believes the veto to be unconstitutional.
- IV. Finally, the Legislative Assembly could take up and override the veto in the next session. However, taking up the veto at all might be viewed as acquiescence in the validity of the veto, potentially setting an unwanted precedent.

Another potential solution would be for the Oregon Legislative Assembly to sue the Secretary of State to enjoin the officer from promulgating the Act without the language improperly vetoed.

When the House next convened in 2020, it chose to treat the single item veto as ineffective by not taking up the veto. Because the transfer occurred within the executive branch, practically speaking, the single item veto was in effect.

Second Conflict Between the Governor and Legislature, House Bill 4304, 2020 Second Special Session

During the Second Special Session of 2020, the Oregon Legislature passed House Bill 4304. On September 20, 2020, Governor Kate Brown purported to veto sections 15, 15a, 16, 18, 18a 18b, 18c, 38–40a, 57, and 61 of House Bill 4304 without affecting the remaining provisions of the bill.

Sections 15, 15a, and 16 repeal the allocation of sports betting lottery funds to the PERS Employer Incentive Fund. Sections 18, 18a, 18b, and 18c repeal the transfer of excess proceeds from capital gains taxes, estate taxes, and debt collection, and the transfer of interest from unclaimed property to the PERS School Districts Unfunded Liability Fund. Sections 38–40a repeal the Wildfire Damage Housing relief account within the Oregon Housing Fund, resulting in the transfer of the fund balance. Section 57 transfers funds from the miscellaneous receipts account for the State Treasurer. Section 61 transfers funds from the Educator Advancement Fund.⁷ Like House Bill 2377, House Bill 4304 was not an appropriation bill.

⁷ Governor's letter to Sec. of State, HB 4304, Sept. 20, 2020.

When the House next convened in 2020, it chose to treat the single item vetoes as ineffective by not taking up the vetoes. Because the transfer occurred within the executive branch, practically speaking, the single item vetoes were in effect.

House Journal and Bill History

With the question of constitutionality still unresolved, the Chief Clerk's Office found itself in an awkward position. How should the final actions of House Bill 2377 (2019 Regular Session) and 4304 (2020 Second Special Session) be reflected in the official record? With no previous history to pull from, the Chief Clerk's Office had to come up with unique verbiage that accomplished one important goal: record the Governor's action while simultaneously not validating the executive's authority to issue single item vetoes on non-appropriation items.

Following lengthy discussions with LC and leadership, the following text was chosen for the journal and bill history (calendar).

- The Governor purported to sign the bill with a line-item veto.
- The time allowed by Article V, Section 15a for the legislature to vote on the purported veto expired. Oregon appellate courts have not yet interpreted what constitutes an appropriation bill for the purpose of Article V, Section 15a.

Conclusion

As of this time, Article V, section 15a has not been interpreted by any Oregon appellate court, and no provision of the Constitution defines "appropriation bill." Until a court determines the constitutionality of single item vetoes in what the legislature defines as non-appropriation bills, the Oregon Executive and Legislative Branches will continue to be mired in a constitutional conflict.





Tashi Nacario

The Engrossing and Enrolling Process

By: Tashi Nacario, Assistant Engrossing and Enrolling Clerk, California State Assembly

Around the year 1690 in British Parliament, the process of engrossment referred to the practice of copying the language of a bill in full, including the drafting of amendments to the bill.¹

Engrossment in the legislative sense today refers to the proofreading and editing of legislation. In California, when legislation undergoes editing, proofreaders work to correct errors and conform measures² to publishing and legal guidelines along with ensuring that amendments have been properly drafted and printed. The form of proofreading carried out by engrossing and enrolling clerks requires expertise in a variety of professional terminologies ranging from legal, medical, financial, and scientific. Proofreaders who engross measures work with various agencies to verify that the printed text of a bill matches the officially adopted language as amended on the floor or in committee of their respective houses.

Enrolling consists of the organization, coordination, and distribution of measures throughout the legislative process. Enrolling staff organize the bills in numerical order as they are introduced and amended and prepare them for engrossment. Enrolling staff also maintain a temporary archive where legislative measures are stored until “adjournment sine die.”³ Once both houses of the legislature vote to pass a bill, clerks of both houses certify and present the bills to the executive for signature or veto.⁴ A simple way to view the process is that engrossment represents the editorial stages of amending legislation while enrollment constitutes the end process wherein a measure leaves the legislature for final determination by the executive.

¹ *Business of the House*. Published in *The History of Parliament: the House of Commons 1690-1715*, ed. D. Hayton, E. Cruickshanks, S. Handley, 2002.

² Measures refers to any form of “legislation” that comes from a legislative body (i.e. the California State Assembly/Senate, the U.S. Congressional House of Representatives/Senate).

³ Adjournment sine die – Latin for adjourn “without day.” It’s a motion to officially end a legislative session.

⁴ Reference California Assembly Rule 79, Sections 9503, 9508, and 9509 of the California Government Code, California Senate Rules 32 and 33, the House of Representatives House Rules I and II, and Senate Rules I and XIV for more information about engrossing and enrolling.

Before laws are created, proposed ideas for legislation undergo scrutiny by elected officials in each house who are provided analyses, public testimony from constituents, experts, and advocacy groups, and feedback from their other elected colleagues. As legislation gets amended, there are staff who carry out the management of legislation as it moves through the process. The impact that laws have on those who fall within its jurisdiction are vast and, at times, none too subtle. It is with this understanding that protecting the integrity of the legislation is a pivotal responsibility of the people who manage the engrossment and enrollment of bills, as mismanagement can produce unintended consequences for people who fall within the law's jurisdiction – hence why this process has existed for hundreds of years in parliamentary legal bodies.

Engrossing in British History

As is common with parliamentary legislative bodies around the world, they model themselves in similar fashion to British/English Parliament. The process of engrossing, however, can be traced even before the days of Parliament. The function of engrossing is one of the most common tasks in any clerical job —something that is required in any circumstance where a formal and preservable record is required. Scribes who recorded information on parchment would engross those records. In British Parliamentary history, the requirement to write the outcome of legislative proceedings goes back to the practice of keeping the “Parliament Rolls,” a formal record of what was done that originates in the last quarter of the thirteenth century. The preparation of the Parliament Rolls was done by clerks in the Chancery, or clerks of the judicial court. In the Houses of Parliament, the clerks were, at a time, all clerks of the Chancery.⁵

Dating back to the mid-1600s, the British House of Commons had what was referred to as the “Ingrossing Office”—making the engrossment of bills the oldest function of the clerk in Parliamentary practice. The Ingrossing Office would have drafted bills on parchment for transmission to the House of Lords with the understanding that the ingrossed measure would be the final version of the bill (so no amendments of the bill in the house of concurrence) and to be presented to the King for “Royal Assent” —a term that is still utilized in British Parliamentary practice today.⁶

In various sixteenth century legislative procedure manuals, the function of ingrossing in the House of Commons is described as having been performed by “the Clerk’s man” or someone directly employed by the head clerk. In 1718, there are specific references to the title of “ingrossing clerk,” but there is not any doubt that the engrossment of bills was done well before this time nor should there be any doubt that it was strictly only the House of Commons that maintained this practice. The House of Commons Office of Ingrossing was, rather coincidentally in 1849 (the coincidence

⁵ *Journal of Parliamentary History*, 2004, Vol. 23(1).

⁶ O.C. Williams *The Clerical Organization of the House of Commons, 1661-1850*. Specific information about the House of Commons Ingrossing Office can be found on pp. 227-234.

being that California first became a state the following year in 1850), abolished with the last historic engrossing clerk dying in office in 1831.

The engrossing and enrolling practice in Parliament today is conducted by the House of Commons' and the House of Lords' Public Bill Offices (PBO). For example, if a bill starts in the Commons, the Commons Public Bill Office holds responsibility for ensuring that the text of a bill is correct and reflects amendments made in committee and report stages. When a Commons bill passes over to the House of Lords, the Lords PBO takes over responsibility of the engrossment of the bill. Any time a change is made to a bill, it is passed between both houses until they can agree to the language of the bill without any amendment changes. The sole responsibility of enrolling a bill, however, is placed with the House of Lords, who prepare the text of the bill to the Queen or King for Royal Assent - Royal Assent being akin to an executive signing a bill into law. While the formality for Royal Assent still exists in British Parliamentary practice, the general understanding is that should the Queen or King withhold Royal Assent for a bill, it would cause a major legal conflict between Parliament and the royal family.

Engrossing and Enrolling in the United States

With regard to the engrossment and enrollment process in the United States Congress, the *Journal of the House of Representatives of the United States* of the First Continental Congress⁷ makes reference to what was known as the Joint Committee on Enrolled Bills. The Compensation Act of 1789 made it possible for both houses of Congress to employ “an engrossing clerk, who shall be paid two dollars per day during the session...”⁸ The process of engrossment and enrollment in the United States finds its roots in the governing philosophy of the “founding fathers,” with references to the process made in publications such as *Jefferson's Manual*, written by the 3rd President of the United States, Thomas Jefferson. In fact, Jefferson placed heavy importance on the proper engrossment and enrollment of a bill. In his critique of the Senate, he stated that they were “so much in the habit of making many material amendments at the third reading that it has become the practice not to engross a bill till it has passed—an irregular and dangerous practice...”⁹

In 1876, the lapse of the joint rules in Congress separated the Joint Committee on Enrolled Bills into two separate standing committees in the House and Senate. While, during this time, documents would still refer to the joint committee, the legislative culture in Congress was that each house had separate jurisdictional review of its own measures. It wasn't until the Legislative Reorganization Act of 1946 that the functions of the Committee on Enrolled Bills were put under the management

⁷ *Journal of the House of Representatives of the United States*, pp. 66-67. Dated July 27, 1789.

⁸ Floyd M. Riddick and Alan S. Frumin, *Riddick's Senate Procedure: Precedents and Practices*, S. Doc. 101-28, 101st Cong., 2d sess., 1992, pp. 819-831.

⁹ Thomas Jefferson, *A Manual of Parliamentary Practice for the Use of the Senate of the United States* (Washington, 1801), section XXXI.

of the House Administration Committee. It was the Senate that would then, in 1945, transfer the power of engrossing and enrolling to the Secretary of the Senate. The House would follow in 2001, when it transferred the same responsibilities to the House Clerk.¹⁰

Congressional practice today differentiates between the two houses. In the House of Representatives, the responsibility of overseeing legislation as it is amended falls under the Clerk of the House who oversees the Office of Legislative Operations. Housed within this office is the bill clerk, the journal clerks, the tally clerks, the enrolling clerks, and the reading clerks. The responsibility of engrossing and enrolling in the House falls under the enrolling clerks, who prepare messages to the Senate regarding passed legislation, engross copies of House-passed measures, and facilitate the official enrollment of House-originated measures that have passed out of both houses.¹¹

Engrossing and Enrolling Clerks in California

Today, in the State of California, the responsibilities of the Engrossing and Enrolling Clerks in both the Assembly and Senate are to proofread legislation as it changes through the legislative process, ensure the integrity of legislation by making sure that amendments are printed in the manner that the authors of the bills desire (i.e. to protect from erroneous and unauthorized changes), and to guarantee a smooth transfer of legislation as it moves from the legislative branch to the executive for affirmation or veto. Under each Engrossing and Enrolling Clerk are staff that provide assistance in the proofreading of legislation, where teams of two individuals read in tandem to provide thorough quality assurance¹², and other staff that help to make sure that the elected officials, committee staff, the Governor's office, and members of the public have an accurate reproduction of bills as amended or passed by their respective houses.

Historically, Engrossing and Enrolling Clerks are a part of California's legislative institution. From the years 1850 to 1899, the engrossment and enrollment of bills were provided for by an Engrossing Clerk and an Enrolling Clerk, respectively. Like other clerks in the Legislature, the Engrossing Clerk and Enrolling Clerk were elected as officers of the Legislature each session. They operated in a more independent capacity—having more unilateral control of their assistants and the ability to make changes to legislation. Before the days of Internet search engines, amendments to bills had to be physically tracked, highly increasing the value of insider information held by clerks.

¹⁰ Heitshusen, Valerie. *Enrollment of Legislation: Relevant Congressional Procedures*. Written October 14, 2015.

¹¹ "The Office of Legislative Operations," Office of the Clerk of the U.S. House of Representatives. http://clerk.house.gov/about/offices_legis.aspx (accessed January 4, 2019).

¹² The current practice of engrossing a measure in the California State Legislature involves a team of two: one individual who reads an original bill, as provided within the original bill's jacket—the document that actually moves from the Assembly/Senate Desk to committee—and another individual who reads the amendments to the bill with strikeout and insertions. This process is carried out every time a measure is amended.

And, while today’s clerks are nonpartisan, clerks historically once served at the pleasure of the majority party that elected them and, at times, were beholden to the majority’s interests.

After 1899, instead of clerks being elected, legislators would vote on and approve resolutions that created an attaché system of support staff. Around this time, the responsibilities of Engrossing Clerk and Enrolling Clerk were combined into one position. It wasn’t until around 1940 that Engrossing and Enrolling Clerks were appointed directly by the Chief Clerk of the Assembly or the Secretary of the Senate. And, while Engrossing and Enrolling Clerks were under the management of the Chief Clerk and the Secretary of the Senate, there were periods of time when the engrossing and enrolling processes were controlled by Committees on Engrossing and Enrolling. It was not until the Legislature’s period of modernization that Chief Clerk Arthur Ohnimus pushed to ensure that clerks in the Assembly maintained a nonpartisan role to prevent any perception of political bias in the processing of legislation. Today, Engrossing and Enrolling Clerks of the Assembly and Senate work cooperatively with the Office of Legislative Counsel to provide assistance with legislation.¹³

The Enrolled Bill Rule and the Separation of Powers Doctrine

One of the most concrete legal doctrines that governs the enrollment process in the California State Legislature is what’s referred to as the “Enrolled Bill Rule” or “EBR.” It establishes that if an act in the Legislature is properly enrolled, authenticated, and filed, then the presumption is made that all of the required and necessary steps were taken in the passage of a piece of legislation. The legislative branch of government maintains a separate authority over its own internal affairs and neither the executive nor the judicial branch can interfere or impeach the Legislature’s ability to govern itself. The EBR is tied to the separation of powers doctrine set forth in Article III, Section 3 of California’s State Constitution.

Historically, the legislative application of the EBR goes as far back as a decision made in 1606 by the Common Pleas bench in Great Britain. Sir Edward Coke, in one of his first cases, oversaw a challenge to Parliament’s internal ability to govern itself in what’s referred to as “*The Prince’s Case (1606)*.”¹⁴ The case before the bench was a property dispute between Queen Elizabeth and Henry, the Duke of Cornwall and the son of King James I. The Queen had granted away several manors within the duchy, drawing the ire of the Prince. The ruling given by Coke was that if a manor had been added to the Duchy of Cornwall by statute, it could not be granted away unless it is

¹³ May, Charles. *History of the Assembly Engrossing and Enrolling Office of the State of California, 1850-Present*.

¹⁴ Micheli, Chris M. *Challenging the Enrolled Bill Rule: A Proposed Middle Ground for California*. The National Law Review. 12 January, 2022. <https://www.natlawreview.com/article/challenging-enrolled-bill-rule-proposed-middle-ground-california> (Accessed February 2, 2022).

also done so through statute.¹⁵ While this ruling further solidified Parliament’s authority over the will of the Royal Family, the overarching consequence of the ruling created a pathway for Parliament to govern its own internal affairs.¹⁶

In the United States, the guiding case that establishes the Enrolled Bill Rule is *Field v. Clark* (1892). When Congress passed the Tariff Act of 1890, Marshall Field & Co., an import business, disputed the collection of the tariff by the tariff collector in the port of Chicago, John M. Clark. The argument that Field presented was that the engrossed version of House Resolution 9416, since it was missing Section 30 when the bill was certified by the Speaker of the House and the President of the Senate, should become an invalidated law. The Supreme Court held, however, that the certification by the Speaker and the President pro Tempore is enough to constitute that all the actions that Congress prior and after the houses’ votes are authentic and that a law that is passed could not “be overcome by what the journal of either house shows or fails to show.”¹⁷

While there have been many attempts to seek judicial review of or overturn a legislative body’s ability to procedurally make and pass laws, courts have historically interpreted this legislative discretion to the benefit of the legislative branch’s separate self-governance. In a more recent court ruling in California, the court held that “Legislatures are presumed to have acted constitutionally. Consequently, statutes must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears.”¹⁸ *California Taxpayers’ Association v. Franchise Tax Board* (2010).

While the EBR has, for the most part, withstood legal challenges in California, *People ex rel. Levin v. County of Santa Clara* is an exception to the otherwise entrenched standard. In the *Levin* case, the Legislature approved amendments to a county charter, but acknowledged in its resolution approving them that the county’s governing body made a material procedural error in publishing the proposed amendments prior to the county electorate’s vote to approve them. In adjudicating a challenge to the constitutional validity of the charter, the appellate court first recognized the general rule that legislative acts are presumed to be constitutional, and that ordinarily, a court would not look beyond the legislative resolution approving a charter. However, the court held that because the Legislature acknowledged the county’s procedural error on the face of its legislative resolution, the court felt it necessary to examine whether the county complied with constitutional requirements governing charter amendments prior to legislative approval. Ultimately, the court found that the county had not been in substantial compliance with those constitutional requirements. Therefore, the court held that it was obligated to invalidate the Legislature’s approval of the charter on the grounds that the approval by the Legislature was not conclusive evidence of the charter’s validity

¹⁵ Boyer, Allen D. *Sir Edward Coke: Royal Servant, Royal Favorite*. http://www.law.harvard.edu/programs/ames_foundation/BLHC07/Boyer%20Sir%20Edward%20Coke%20-%20Royal%20Servant%20and%20Royal%20Favorite.pdf (accessed February 9, 2022).

¹⁶ Coke, Edward. *Prince’s Case* 8 Coke 13b, 77 ER 496. 11 January 1606. See also *The King v. Arundel* (1616).

¹⁷ *Field v. Clark*, 143 U.S. 680 (1892) p. 143.

¹⁸ *California Taxpayers’ Association v. California Franchise Tax Board*, 190 Cal.App. 4th 1139, 1146 (2010)

when the county’s failure to comply with constitutional procedure was revealed on the face of the legislative resolution.¹⁹

The Engrossing and Enrolling Tradition

Engrossing and Enrolling Clerks have maintained both the historical tradition and legal responsibility to safeguard legislation at every step of the process, from its introduction across the desk to its presentation to the executive. While the function of the “E&E clerk” has changed over time, the fundamental principle they hold in preserving the will of the elected body still remains the same. It is a role that has drastically evolved from the late 1600s,²⁰ yet can still be found in many of the legislative bodies in the United States. The long-standing roots of the engrossing and enrolling practice is found in the clerk’s ability to research, transcribe, and proof large volumes of work—a service that has played its part in parliamentary history and continues to be provided by clerks today.



¹⁹ *People v. County of Santa Clara*, 37 Cal.2d 335, P.2d 826. (1951)

²⁰ From the years 1789 to 1823, clerks hand-lettered the text of laws and resolutions on parchment made from sheep or goat skin—the parchment that would differ in size up to 30x30 inches.

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Spring	1996	Behnk, William E.	<i>California Assembly Installs Laptops for Floor Sessions</i>
Spring	1997	Brown and Ziems	<i>Chamber Automation in the Nebraska Legislature</i>
Fall	2020	Carlson, Brittany Y.	<i>An in-depth look at assistive technologies provided by the Washington Legislature for Lt. Governor Cyrus Habib</i>
Fall	2008	Coggins, Timothy L.	<i>Virginia Law: It's Online, But Should You Use It?</i>
Spring	2002	Crouch, Sharon	<i>NCSL Technology Projects Working to Help States Share Resources</i>
Spring	1997	Finch, Jeff	<i>Planning for Chamber Automation</i>
Summer	1999	Galligan, Mary	<i>Computer Technology in the Redistricting Process</i>
Summer	1999	Hanson, Linda	<i>Automating the Wisconsin State Assembly</i>
Fall	1995	Larson, David	<i>Emerging Technology</i>
Fall	2022	Martin, Megan	<i>Time for a Change</i>
Fall	1996	Pearson, Herman (et al)	<i>Reengineering for Legislative Document Management</i>
Fall	1995	Schneider, Donald J.	<i>Full Automation of the Legislative Process: The Printing Issue</i>
Spring	2006	Steidel, Sharon Crouch	<i>E-Democracy – How Are Legislatures Doing?</i>
Fall	2007	Sullenger, D. Wes	<i>Silencing the Blogosphere: A First Amendment Caution to Legislators Considering Using Blogs to Communicate Directly with Constituents</i>
Spring	2009	Taylor, Paul W.	<i>Real Life. Live. When Government Acts More Like the People It Serves.</i>
Fall	2009	Taylor and Miri	<i>The Sweet Path - Your Journey, Your Way: Choices, connections and a guide to the sweet path in government portal modernization.</i>

Fall	1997	Tinkle, Carolyn J.	<i>Chamber Automation Update in the Indiana Senate</i>
Fall	2009	Weeks, Eddie	<i>Data Rot and Rotten Data: The Twin Demons of Electronic Information Storage</i>
Fall	2013	Weeks, Eddie	<i>The Recording of the Tennessee General Assembly by the Tennessee State Library and Archives</i>