

MINUTES
IOWA LEGISLATIVE COUNCIL
July 21, 1993

PRELIMINARY BUSINESS

The fourth meeting of the 1993-1994 Legislative Council was called to order by Chairperson Wally Horn at 1:15 p.m., Wednesday, July 21, 1993, in Room 116 of the State Capitol Building in Des Moines, Iowa. Members present in addition to Chairperson Horn were:

Representative Harold Van Maanen, Vice Chairperson
Senator Leonard Boswell
Senator Florence Buhr
Senator Donald E. Gettings
Senator Jim Lind
Senator Larry Murphy
Senator William D. Palmer
Senator Jack Rife
Representative Bob Arnould
Representative Cliff Branstad
Representative John H. Connors
Representative Ron J. Corbett
Representative Wayne McKinney
Representative Brent Siegrist

ROLL CALL AND MINUTES

Chairperson Horn noted that the roll was taken as the members arrived.

Representative Connors moved that the minutes of the June 23, 1993, meeting be approved as submitted. The motion was adopted.

REPORT OF THE STUDIES COMMITTEE

Chairperson Horn explained the recommendations of the Studies Committee. Representative Connors moved that the Report of the Studies Committee be adopted. The motion was adopted. A copy of the Report of the Studies Committee is attached to, and by this reference made a part of, these minutes.

REPORT OF THE ADMINISTRATION COMMITTEE

The Administration Committee did not hold a meeting on July 17, 1993, as scheduled. Senator Horn recognized Senator Palmer, Chairperson of the Administration Committee. Senator Palmer asked that the Legislative Council approve the sale of a copy of Chapter 533 on a diskette as requested by the Iowa Credit Union League, and as recommended by the Superintendent of the Iowa Credit Union Division, and that the price for the copy be \$50. Senator Buhr questioned whether \$50 was adequate to cover the costs of producing the disk and Senator Palmer responded that it was. The motion was moved by Senator Palmer and adopted.

REPORT OF THE FISCAL COMMITTEE

Chairperson Horn recognized Representative Ron Corbett, Co-chairperson of the Legislative Fiscal Committee, for its report. Representative Corbett stated that the Committee met on July 9, 1993, in Room 24 of the State Capitol. He stated that the Committee made no formal recommendations to the Legislative Council, but that it did receive information on the following issues: Iowa Communications Network - Update; Update on DHS Waiver Process - Welfare Reform and Title 19; Department of Revenue and Finance - Status of Federal Tax Changes; and Correctional Substance Abuse Counselors - Payment of Overtime.

In response to questions by Representative Connors regarding payment of overtime to substance abuse counselors, Senator Murphy explained that the Department of Human Services is in the process of renegotiating the contract and may either privatize substance abuse counseling or not provide the service.

Senator Lind requested that the entire Legislative Council receive copies of the Iowa Communications Network Updates for the past two months and for each future update. Chairperson Horn directed the Legislative Service Bureau to obtain and distribute the information. Representative Corbett moved the Report of the Fiscal Committee be accepted. The motion was adopted. A copy of the Report of the Fiscal Committee is attached to, and by this reference made a part of, these minutes.

ADDITIONAL BUSINESS

Senator Boswell stated that he wished to formally recognize Mr. Bill Angrick and the Citizens' Aide/Ombudsman's Office for providing information regarding volunteer activities relating to the 1993 Iowa flood during the past few weeks.

Chairperson Horn indicated that several state and federal officials were present to describe their activities relating to the recent flooding in Iowa.

MS. ELLEN GORDON, DIRECTOR, OFFICE OF EMERGENCY MANAGEMENT
DIVISION, DEPARTMENT OF PUBLIC DEFENSE

Ms. Gordon stated that state and local governments have responded above anyone's expectations to the flood disasters that have hit Iowa. She commented that the flood response has been an ongoing battle since March 26 and she recognized the following state agencies for working around the clock on flood efforts: Iowa National Guard, Department of Public Safety, Department of Transportation, Department of Elder Affairs, Department of General Services, Department of Natural Resources, and other state agencies which have provided additional support. She stated that she hopes the citizens of Iowa and local governments have received the help that they have needed. She commented that recovery efforts will be long-term and that the process of recovery has just begun.

Ms. Gordon explained that her office has been working closely with the Federal Emergency Management Agency (FEMA) and the Army Corps of Engineers. She thanked the General Assembly for its previous support and said that she believes all of the state's earlier efforts on behalf of the Emergency Management Division are paying off today. Senator Rife asked what effect the relief efforts have had on the Emergency Management Division's budget. Ms. Gordon responded that her staff is working on providing budget figures.

Ms. Gordon commented that the Governor has requested that FEMA waive the state and local government match requirements on the FEMA programs. She said that the state is liable for 10 percent of the public assistance program costs which she estimated would mean between \$30 to \$50 million for the state's portion. (Local government is liable for 15 percent of the public assistance program costs.) She added that this figure did not include damage to state property where the state is liable for the full 25 percent of costs. For the individual program, she said, the state is liable for 25 percent of costs. She stated that she had 8,400 applications for individual assistance to date and that if the state's matching portion is not waived, the state must provide \$5 to \$10 million which does not include emergency response costs. Senator Rife asked how quickly the money would be needed and Ms. Gordon responded that the money was needed immediately.

Senator Murphy asked whether the Emergency Operations Center had access to other state funds. Ms. Gordon responded that she was uncertain. Representative Branstad questioned whether adequate safeguards exist to ensure that money goes only to those who actually need it. Ms. Gordon assured him that there are many existing checks and balances in the system prior to payment.

Chairperson Horn asked how soon the money would be needed and Ms. Gordon responded that it would be needed in August and September and that checks were already being written for individuals. She explained that the Executive Council allocated the initial \$1.3 million which is required for individual assistance and that for the public assistance it is hoped that funds can be distributed within the next three to four weeks. Chairperson Horn asked whether the Governor has access to sufficient funds to deal with this situation or whether a special legislative session will be necessary. Ms. Gordon responded that that issue would be discussed with the Governor that afternoon.

Senator Lind asked whether the state can pay for a greater portion of the moneys than the required match. Ms. Gordon responded that Chapter 29C of the Iowa Code states that the state can contribute no more than 10 percent. Representative McKinney raised a question regarding communication between the city, county, and state during the flooding crisis. Ms. Gordon responded that as far as the waterworks situation in Des Moines, the Raccoon River came up faster than anyone could have imagined and that to her understanding the various governmental groups are communicating effectively.

Chairperson Horn thanked Ms. Gordon for her presentation and for the work she and her office had performed over this time period and told her that the General Assembly wants to do all it can to help. Ms. Gordon stated that she would provide periodic recovery reports in order to keep the legislators informed. She added that during the budgeting process next session, legislators should remember that some state agencies have been hit hard by this disaster.

Chairperson Horn introduced Mr. Jack Hatch, who is the Director for Senator Tom Harkin's Office in Iowa. Mr. Hatch stated that in response to Senator Horn's office requesting information from the federal government, representatives from several agency disaster relief agencies are present to provide information to the Legislative Council. He referred to a letter which Senator Harkin sent to 1,800 elected officials, which is a gathering of information which may help to answer constituent questions, and which is on file with the Legislative Service Bureau.

MR. DICK BUCK, FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

Mr. Dick Buck, representing the Federal Emergency Management Agency, explained that he coordinates all federal assistance and administers the FEMA program in Iowa. He said that the FEMA program is two-part: individual and public assistance. He announced that under the individual side of the program, emergencies had been declared for all 99 counties and under the public side of the program, emergencies had been declared for 10 counties. He added that he has the authority to add additional counties to the public portion and that the list of counties will probably be expanded. He said it is FEMA's intent to provide assistance to seriously damaged areas.

He explained FEMA's housing programs and individual and grant programs and stated that FEMA had 8,473 families who had applied for assistance so far. He explained that FEMA had 4,600 applications for housing assistance and that FEMA has issued 390 checks. However, he said that the FEMA inspectors will be performing 500 inspections per day and hope to issue 300 to 500 checks per day. He commented that if a home is still underwater, FEMA will issue a two-month rental check.

Mr. Buck explained that the Disaster Unemployment Assistance Program which is administered by the Department of Employment Services is for those persons not covered under other unemployment compensation programs. He added that FEMA also administers a program in crisis counseling. He explained that a city or county only need apply for the public portion of FEMA and that an inspector will be sent out to investigate the damage.

Chairperson Horn asked what percentage of the public assistance program is federal money. Mr. Buck responded that the federal grant for public agencies is 75 percent federal, 10 percent state, and 15 percent local match and explained that the check from the federal government is transmitted to the state, which adds the 10 percent, and then the funds are sent to the local governmental body. Senator Buhr asked whether the state's portion of the public assistance program can be waived. Mr. Buck responded that it can be waived. Senator Buhr questioned whether there would be adequate funding available. Mr. Buck stated that he anticipated that there would be adequate funding and added that the federal government is now going through the appropriations process to provide additional moneys.

Senator Boswell asked for information concerning the deadlines for funding applications. Mr. Buck responded that a public agency has 60 days from the date of declaration to file an application and added that there are waivers for good cause. He stated that FEMA does not want anyone to be excluded from assistance.

Representative Connors asked whether persons who do not come to work are eligible for disaster unemployment assistance. Mr. Buck responded that eligibility criteria is to be determined by the state. Representative Branstad asked what effect this has on migrant workers. Mr. Buck stated that a worker is eligible if he or she cannot work because of the situation and that to apply the worker should go to a local unemployment office. Senator Murphy asked whether seasonal workers are also eligible. Mr. Buck commented that they would also be eligible if they had been promised work but that this issue is very difficult to administer. Chairperson Horn raised the question of whether someone who has only worked 20 days because of the rain can receive unemployment assistance. Mr. Bill Hansen, Associated General Contractors, responded that those persons who do not work because of the rain do not qualify, but that those persons who cannot work because of the flood do qualify for unemployment assistance.

**MR. BERNARD KULIK, ASSISTANT ADMINISTRATOR FOR DISASTER ASSISTANCE,
FEDERAL SMALL BUSINESS ADMINISTRATION**

Mr. Bernard Kulik, the Assistant Administrator for Disaster Assistance, stated that the Small Business Administration (SBA) is the primary source for federal funding for nonagricultural or nongovernmental entity losses and that it is committed to be in Iowa as long as it takes to help people recover. He added that the SBA is not limited only to major population centers, but also provides services throughout the state. He explained that the federal design for long-term recovery is first to rely on private insurance, second on SBA long-term loans, and third on grants from the individual and family grant program, and that the SBA provides long-term recovery efforts through long-term, low-interest loans to individuals, homeowners, small and large businesses, and nonprofit agencies. He stated that these loans are available for as low as 4 percent per year for up to 30 years based on repayment ability which is based on cash flow. He explained that the SBA is not permitted to take collateral for any loan of \$10,000 or less, and if the loan exceeds \$10,000, the SBA can take whatever collateral is available. He commented that the SBA does have sufficient funds to handle the situation in Iowa.

Mr. Kulik stated that the second program is the economic injury program for small businesses who cannot obtain credit elsewhere. He explained that economic injury loans are working capital loans to help keep a business operating for a period of time but not to provide reimbursement for lost profits. He explained that the SBA does not loan money to farmers but will provide economic injury loans to agriculture-related businesses. He added that in Iowa there is an active small business development center (SBDC) and referred to Mr. Ron Manning, the director of the center. He stated that the SBDC will be running workshops to help small businesses to complete the applications and obtain assistance.

Representative Arnould asked whether SBA loans are loans of last resort. Mr. Kulik responded that they are not, but that a person must first rely on private insurance where available and explained further that a person is not eligible for a grant until the person has first applied for a loan. In response to a question by Senator Lind, Mr. Kulik stated that the 4 percent interest rate for SBA loans is set by statute. Chairperson Horn commented that small business insurance often provides for business interruption inside the building but not outside the building. Mr. Kulik commented that SBA will not cover anything that insurance does cover and then only in an amount sufficient to keep the business operating. He stressed that businesses should apply for a loan immediately and not wait to receive an insurance settlement.

MS. GRETCHEN TEGELER, DIRECTOR, DEPARTMENT OF MANAGEMENT

Ms. Tegeler, Director of the Department of Management, stated that there are two standing unlimited appropriations from which flood-related payments may be made. One is the Executive Council contingency fund (performance of duty fund, Code section 7D.29) and the other is the compensation and expense of the Iowa National Guard. She stated that the decision-making authority for distribution of these funds rests with the Executive Council. She distributed a handout explaining those funds which is on file with the Legislative Service Bureau. She explained that when the Governor's budget is submitted in December, an estimate will be made of what the total amount spent from the funds will be and that if the actual amount exceeds that, the budget proposal must be adjusted over time. She stated that the Executive Council has already approved \$1.3 million from the Executive Council Contingent Fund for payments under the individual and business assistance program.

Ms. Tegeler continued that the National Guard Fund pays the National Guard expenses when they have been activated by the Governor. So far, she said, for FY 1994, \$618,000 has been expended from the Fund. She stated that the extent of the state's obligation will hinge upon whether the FEMA matching requirements are waived. She explained that state agencies have contacted their counterparts in Florida to pursue more information on the waiver and the availability of federal funds since the match requirements were waived in Florida after Hurricane Andrew. She explained that the state has elected to pick up 10 percent of the public infrastructure matching program leaving 15 percent of the match requirement to be funded by the local governments.

Ms. Tegeler stated that the Executive Council contingency fund was budgeted at \$935,000 and that that amount will be revised upwards. She said that this will, in turn, lower the projected ending balance in the state general fund. She said that there was a \$52 million projected ending balance in the state general fund. She stated that flood-related expenditures would affect GAAP deficit reduction obligations. She expressed the belief that there have been a number of impacts on the spending side of the ledger and that state agencies will have many direct and indirect costs as a result of the flooding. She said that her department will have to analyze spending and receipts for the budget process to determine the total effect on revenue. She added that the recent Supreme Court decision, Hagge, compounds the state's budgeting woes. (The Hagge decision is explained beginning on page 10 of these minutes.)

Representative Arnould asked whether Ms. Tegeler anticipates the Governor calling a special legislative session. Ms. Tegeler stated that it is too early to tell, but that for the time being, the Executive Council can continue to authorize spending and the Governor could order across-the-board reductions. Representative Arnould asked whether across-the-board cuts would compete with the 99 percent spending limitation. Ms. Tegeler stated that Code section 8.54 spending limitation applies to the Governor in the development of the budget and to the Legislature in enacting the budget and that this requirement has been met for FY 94. She said that the Code does not require a continuing obligation to meet the 99 percent limitation once met.

Representative Corbett clarified that if the state receives the federal waiver, it would take the pressure off the state budget, but that the General Assembly should stay alert to the possibility of a special session. Ms. Tegeler commented that if the state does not receive the waiver, the General Assembly will have to address the budget problem within the next few weeks and stated that she will keep the Legislative Fiscal Bureau informed. Ms. Tegeler stated that the public assistance program matching requirement can be administratively waived at any time. Representative Corbett stated that when the 1993 Session ended, there was a \$34 million projected ending balance for FY 93. Since that time revenues have increased, and he asked if Ms. Tegeler knew what the actual FY 93 ending balance will be. Ms. Tegeler responded that the current estimate is \$36 million, which is almost exactly the amount necessary to fill the cash reserve fund in FY 94. The two variables which will affect the actual ending balance, she said, are actual end-of-year reversions and revenue accruals. Representative Corbett stated that the anticipated ending balance for FY 94 is \$52 million and that would leave a \$7 million cushion before it affects the 99 percent spending limitation. Ms. Tegeler clarified that the spending limitation applies to the budget during session only and not to actual expenditures. Representative Corbett commented that revenues had dipped during the end of FY 93 and asked where FY 94 revenues stand. Ms. Tegeler responded that income, use, and corporate taxes are all at or above projections and that sales tax is probably below projections. She commented that sales tax receipts so far this month are only 7.5 percent above last year and should probably be in the 15 percent range.

Representative Corbett commented that there will be immediate needs and long-term effects from the flood, in addition, he stated, the Hagge decision will have a \$70 million impact on the state's revenues over a four-year period. Ms. Tegeler commented that at some

point the General Assembly needs to be brought into the process. Vice Chairperson Van Maanen commented that the General Assembly will have a much better idea of the flood's revenue implications in two weeks and suggested that the leadership and the two appropriations committee chairs meet with the Governor after that. Senator Palmer commented that he has heard projections of a reduction of anticipated revenues by as much as \$50 million from agriculture and related businesses. Ms. Tegeler, while not concurring in Senator Palmer's estimate, did agree that there would be a substantial financial impact to the state. Mr. Buck commented that President Bush waived the state of Florida's share by a certain amount based upon a per population formula, which Ms. Tegeler interjected would be about a \$7 million equivalent in Iowa.

Mr. Hatch urged everyone in attendance to encourage the Iowa congressional delegation to pass the flood relief bill.

MR. TOM GRAU, STATE DIRECTOR OF THE AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (ASCS)

Mr. Tom Grau, State Director, U.S. Agricultural Stabilization and Conservation Service (ASCS), distributed handouts detailing the ASCS and related programs fact sheets which are on file with the Legislative Service Bureau and available upon request. Mr. Grau stated that because of the wet weather approximately 300,000 acres of corn and 700,000 acres of soybeans were not planted this year, which represents about 5 percent of the total acres of corn and soybeans. He added that the percent of the corn and soybean crops listed as poor is increasing. He stated that the ASCS office has requested up to \$8 million in federal funds to repair soil and water conservation practices that were damaged in the recent floods and this represents a 64 percent cost share between the federal government and the producers. He stated that the state has been opened for set-aside acres for haying and grazing that have been planted, but that only nine counties have been opened for the conservation reserve program. He added that the Emergency Livestock Feed program can be of assistance and that dates for certification have been extended from the June 15 to July 31. By July 31, he stated, ASCS should have accurate figures on the amount of cropland that has been totally flooded. Mr. Grau introduced Mr. Jeff Vonk from the Soil Conservation Service.

MR. JEFF VONK, STATE CONSERVATIONIST, U.S.D.A. SOIL CONSERVATION SERVICE (SCS)

Mr. Jeff Vonk, State Conservationist, United States Department of Agriculture's Soil Conservation Service (SCS), explained that the emergency watershed program has not been used extensively in the state before, and that it allows the SCS to work with cities and counties to repair bridges, to clear trees and sediment built up in a channel, and to provide help in protecting other public infrastructure facilities. He said that where life is in imminent danger the SCS pays 100 percent of the costs of cleanup, in other situations involving property loss, funding is a maximum 75 percent federal and 25 percent local match. He said that the SCS has let 35 contracts to date, and has 150 requests for help and estimated \$20 to \$25 million in requests from local governments.

Senator Boswell asked about the turnaround time on the Conservation Reserve Program (CRP) county applications. Mr. Grau answered that the turnaround is fewer than 20 hours. In response to a comment by Representative Branstad, Mr. Grau confirmed that there is currently a 50 percent payback on CRP acres.

MS. ELLEN HUNTOON, STATE DIRECTOR, FARMER'S HOME ADMINISTRATION (FmHA)

Ms. Ellen Huntoon, State Director of the Farmer's Home Administration (FmHA), explained that crop losses are dealt with through ASCS and that all other persons should ask FEMA for help first. She referred to fact sheets which were distributed and explained that FmHA can make direct physical loss loans immediately and can make production loss loans to farmers. She discussed the various housing loss loans that FmHA can make. She summarized by stating that in order to obtain assistance, persons must first go to FEMA, then to SBA, and finally, FmHA is the next layer down. She added that FmHA has many community programs such as emergency community water assistance grants, water and sewer loans, and community facility loans and grants.

Ms. Huntoon asked Mr. Dorman Otte, Chief of Community and Business Programs, for FmHA to add to the discussion. Mr. Otte explained the emergency community water assistance grant program which is to be used for repairs needed as the result of a natural disaster. He added that the FmHA has a regular community facility loan and grant program and a business and industrial disaster assistance program which parallel the SBA programs.

Chairperson Horn asked whether the grant program addressing losses of less than \$5,000 includes water heaters and furnaces. Ms. Huntoon responded that it would. Representative Branstad asked about the home building program for rural areas. Ms. Huntoon responded that the interest rate is 7.25 percent in amounts up to the range of \$65,000 - \$70,000. She added that requesters must meet the income requirements within the community and that FmHA does not make a loan if the applicant has adequate housing.

MR. BILL HANSEN, ASSOCIATED GENERAL CONTRACTORS OF IOWA

Mr. Bill Hansen, Associated General Contractors of Iowa, stated that the potential cost to infrastructure from the flooding damage in Iowa is being underestimated. He said that Iowa has the tenth largest road system and the third largest bridge system in the country. He commented that the persistent rain has been as much of a problem for the construction industry as has the actual flood. He said that Iowa has a 32-week construction season which is almost half over and of the work which should have been completed, only one-third to two-thirds of the work is completed. He said that the construction industry is starting to lose workers because many construction workers have not received more than the equivalent of one month's check in the last three months. He concluded that there have been 63 road closures in the state and that no one knows the full extent of the damage which has been done.

MR. CARL CASTELDA, DEPUTY DIRECTOR, DEPARTMENT OF REVENUE AND FINANCE

Mr. Carl Castelda, representing the Department of Revenue and Finance, gave a brief overview of the case of Hagge v. Iowa Department of Revenue and Finance which was issued earlier on the day of the meeting by the Iowa Supreme Court. He explained that in Davis v. State of Michigan (1989), the United States Supreme Court found that providing tax benefits to state and local employees without also providing those tax benefits to federal employees was a violation of the United States Constitution but that the court failed to determine whether this decision should be applied retroactively. He continued that in Harper v. State of Virginia, the United States Supreme Court decided that such statutes should apply retroactively when found unconstitutional. He said that in the Davis case, the U. S. Supreme Court decided that the actual payments can be determined under state law and that if an adequate predeprivation remedy existed, the refund may not be required. He said that the state of Iowa argued that it did have a predeprivation remedy and therefore refunds were not required but he noted that the Iowa Supreme Court said that the Iowa predeprivation statute in Section 422.73, subsection 2, does not meet due process requirements; therefore, the state must make the refunds within a period of four years.

He stated that the Department of Revenue and Finance would be petitioning the Iowa Supreme Court for a rehearing because the court raised the possibility of retroactively imposing taxes on state and local employees. The problem with that, he said, is that the Department of Revenue and Finance does not have authority to impose a tax retroactively and the years in question, 1985 - 1988, are past the statute of limitations for both auditing and assessing additional taxes and filing additional refund claims. He added that this issue was not brought before the court. He said that one of the alternatives the state could use is to impose retroactive taxes, which he stated is not a good political option and probably would be unconstitutional.

He commented that the other options are to pay the refund claims which would be approximately \$42-43 million and includes interest through 1993. He said there are approximately 35,000 claims, with an average of \$575 per claim. He added that there was an error rate of 6 percent of incorrect claims which would reduce claims by \$1 million to \$1.5 million.

Mr. Castelda continued that another tax case also impacted by this case is the Kraft decision relating to taxing foreign dividends. He explained that the retroactivity issue which was argued in Hagge was the basis for the Kraft claims and that the Hagge decision means that the Kraft case will require \$28 million of refunds. He concluded that between the two cases, the state has \$70 million of refund claims that are accruing interest at about \$385,000 per month. He explained that the state's options are to pay claims over a four-year period, and that he has asked the Attorney General's Office if the General Assembly can decide not to pay additional interest accrued after 1993. He explained that some states have special statutes of limitations that allow for a shorter period of time to file refund claims. He added that the Department personnel are still analyzing the Hagge case. He said that in the next legislative session, retirement issues and federal tax plan attempts to tax greater portions of social

security at the federal level, ramifications of the Hagge case, and taxation of nonresident pensions will be issues which the General Assembly will need to address.

Representative Corbett requested that Mr. Castelda provide any additional information to the Legislative Fiscal Bureau.

ADDITIONAL BUSINESS

Chairperson Horn informed the Council that the next tentative meeting dates for Legislative Council are Wednesday, August 25, and Wednesday, September 22.

Representative Corbett requested that a resolution be drafted and adopted by the Council which requests that the federal requirements for matching federal disaster funds related to the flooding be waived. The motion was made and adopted by unanimous consent. The Legislative Service Bureau was requested to draft the resolution. Representative Corbett also requested that a resolution be drafted which thanks state employees for going above and beyond the call of duty during the flooding crisis. The motion was made and adopted by unanimous consent. The Service Bureau was also directed to draft the resolution. The meeting adjourned at 3:22 p.m.

Respectfully submitted,

JULIE SMITH

Legal Counsel

2880LC