

M I N U T E S
IOWA LEGISLATIVE COUNCIL

June 21, 1989

PRELIMINARY BUSINESS

The third meeting of the 1989-1990 Legislative Council was called to order by Senator Bill Hutchins, Chairperson, at 2:23 p.m., Wednesday, June 21, 1989, in Senate Room 22 of the State Capitol Building, Des Moines, Iowa.

Members attending, in addition to Chairperson Hutchins, were:

Speaker Don Avenson, Vice-Chairperson
Lieutenant Governor Jo Ann Zimmermann
Senator C. Joseph Coleman
Senator Donald V. Doyle
Senator Julia Gentleman
Senator Calvin O. Hultman
Senator Emil J. Husak
Senator Jack Nystrom
Senator Joe J. Welsh
Representative Florence D. Buhr
Representative Kay Chapman
Representative John H. Connors
Representative William H. Harbor
Representative Thomas J. Jochum
Representative Mary A. Lundby
Representative Delwyn Stromer

Also present were: Diane Bolender, Acting Director, Legislative Service Bureau; Dennis Prouty, Director, Legislative Fiscal Bureau; Bill Angrick, Citizens' Aide/Ombudsman; Sandy Scharf, Director, Computer Support Bureau; Richard Johnson, Legal Division Chief, Legislative Service Bureau; other legislative staff members; representatives of the news media; and other interested persons.

The Council minutes of the meeting of May 17, 1989, were approved as distributed.

IOWA PUBLIC POLICY EDUCATION PROJECT

Chairperson Hutchins introduced Dr. Mark A. Edelman, the Iowa Public Policy Education Project Coordinator, from Iowa State University. Dr. Edelman had requested time to make a presentation before the Council regarding the establishment of the Iowa Public

Policy Education Project. Dr. Edelman stated that the Project is being established to educate rather than advocate, regarding major issues facing the state of Iowa. The procedures which will be used by the Project will include the clarification of problems, the outlining of options, and an analysis of consequences of these options, with decision making to be left to the political arena. He stated that the Project is currently planning three activities: a Founders' Iowa Agenda Conference, scheduled for September 14, 1989; and the conducting of two satellite town meetings.

Dr. Edelman requested the assistance of the Legislative Council in the formation of the Iowa Public Policy Education Project Advisory Council. He specifically requested that the Legislative Council designate two of the eighteen members of the Advisory Council, but invited all legislators to participate in the work of the Project. He added that if the Legislative Council were interested, the Project would be interested in conducting a legislative forum, whereby the Project could identify resources and academic options, provided that the ground rules would be that the Project would not request financial support from the Legislative Council and would not make policy recommendations.

Dr. Edelman distributed to members of the Legislative Council a brochure entitled "Iowa Public Policy Education Project," which sets out the goals of the Project as gaining the latest perspectives on current issues; discussing the impacts of public policies with other Iowa leaders; participating in a new, innovative effort to foster common understanding among citizens and leaders; and helping form a broad coalition of state leaders that will shape Iowa's future.

Dr. Edelman introduced Dr. Dave Hammond, the Director of the Project. Dr. Hammond explained that the funding for the Project is from a Kellogg Foundation grant and has been awarded over a four-year period. He explained that the Advisory Council will actually set the agenda of the Project and that it is hoped that the Project can eventually deal with the more controversial issues facing the state. Representative Stromer asked Dr. Edelman what action he was requesting the Legislative Council to take. Dr. Edelman answered that the specific request is for the appointment of the two legislators, one Democrat and one Republican, to the Advisory Council. Representative Connors moved that leadership be authorized to make the appointments. Chairperson Hutchins thanked Dr. Edelman and Dr. Hammond for their presentations.

FINAL REPORT OF THE MIDWESTERN LEGISLATIVE CONFERENCE

Chairperson Hutchins recognized Representative Connors for his report regarding the Midwestern Legislative Conference. Representative Connors reported that the current balance of funds, after most expenditures have been paid for the 1987 Midwestern Legislative Conference meeting held in Des Moines, is approximately \$6,000. He recommended that members of the

Interstate Cooperation Commission meet with the Acting Director of the Legislative Service Bureau, joint leadership, and members of the Service Committee to determine the appropriate use of the remaining funds. He also noted that the appropriate offices of the Council of State Governments will be consulted concerning the use of these moneys. Representative Stromer suggested that the persons designated examine the uses of such funds by other states. By unanimous consent, the Legislative Council agreed that the issue should be referred to the Service Committee for action.

SALE OF CODE OF IOWA DATA BASE

Chairperson Hutchins recognized Diane Bolender, Acting Director, and Richard Johnson, Legal Division Chief, of the Legislative Service Bureau, for an explanation of the memorandum in the Council packet regarding the sale of Legislative computer tapes to commercial firms. Mr. Johnson explained that the Legislative Service Bureau has recently received several inquiries from commercial firms that either offer on-line access to legislative data bases or are interested in the publication of a competing Code of Iowa compilation. These firms are interested in obtaining the information about Iowa's statutes from computer tape rather than from the print publications to which they currently have access. The Legislative Service Bureau is therefore seeking input from the Legislative Council regarding these inquiries, and is requesting that the Legislative Council consider the development of a policy for the sale and pricing of such computer tapes to commercial firms.

Senator Hultman suggested that the policy take into consideration the fact that some of the commercial firms may, in fact, attempt to compete with the state's publication of the Iowa Code.

Chairperson Hutchins asked for the unanimous consent of the Legislative Council to refer the issue to the Administration Committee. There being no objection, the issue was so referred.

IMPROVEMENTS IN LEGISLATIVE SOUND SYSTEM

Chairperson Hutchins called up for discussion the issue of the improvement in the legislative sound systems. Enclosed in the Council packet is a memorandum to Jack Dwyer, Secretary of the Senate, and to Joe O'Hern, Chief Clerk of the House, from Steve Palm, Department of General Services, Communications, regarding the sound systems and a recommendation to solve the problems in the systems. Chairperson Hutchins asked unanimous consent that the Legislative Council defer action on this issue until the Council's next meeting, and asked that the Administration Committee report to the Council at that meeting. There being no objections, the issue was so referred to the Administration Committee.

LEGAL RESEARCH POLICY FOR LEGISLATIVE SERVICE BUREAU

Chairperson Hutchins recognized Diane Bolender, Acting Director of the Legislative Service Bureau, regarding a memorandum in the Council packet regarding legal research requests to the Legislative Service Bureau. Ms. Bolender explained that pursuant to Code section 2.58, the Legislative Service Bureau receives requests from legislators to perform legal research and prepare reports pertaining to that research. However, the Code section prohibits such reports and the findings in such reports from containing recommendations made by the staff of the Legislative Service Bureau. She noted that recently, legal research requests have been made which ask Bureau attorneys to make conclusions regarding the legality of certain factual situations as related to Iowa law. Such requests bring into question the propriety of the Bureau making such conclusions in light of the statutory prohibition against the making of recommendations. She stated that the Bureau is therefore seeking the advice of the Legislative Council in establishing a legal research request policy which would meet both the needs of the legislators and of the Bureau.

Chairperson Hutchins asked for the unanimous consent of the Council to refer the issue for deliberation to the Service Committee and that the Service Committee report its findings to the Legislative Council in August. There being no objections, the issue was so referred to the Service Committee.

REVIEW OF IOWA SUPREME COURT RULE CHANGES

Chairperson Hutchins recognized Senator Doyle for a report on two changes filed to court rules. The first change is an amendment to Iowa Rule of Appellate Procedure 7. Senator Doyle described the change to the rule and stated that he had heard of no objections to the changes. The second change in the rules relates to the striking or repeal of Iowa Rule of Probate Procedure 7. Senator Doyle explained that the Supreme Court wishes to delete the rule and noted that legislation had been passed in the 1989 Session which would be in harmony with the striking of this rule. He stated that he had heard no objections to the repeal of this probate rule. Senator Doyle moved that the report from the Supreme Court be received and filed. The motion was adopted.

INFORMATIONAL REPORT ON STATE FINANCIAL MANAGEMENT BY TREASURER OF STATE MICHAEL FITZGERALD

Chairperson Hutchins recognized Treasurer of State Michael Fitzgerald for a presentation regarding state financial management. Treasurer Fitzgerald thanked the Council for allowing him to appear regarding the use by the state of lease/purchase agreements. He stated that the state has been involved in several

different situations involving these types of agreements, namely the purchase of cash registers some years ago by the Beer and Liquor Control Commission; the more recent purchase by the Department of General Services of an executive branch computer system; and the 1989 legislative authorization to use a lease/purchase arrangement to construct additional prison space. Regarding the lease/purchase of cash registers some years ago, Treasurer Fitzgerald stated that the state essentially defaulted on the lease/purchase agreement for the cash registers and that in the end a \$500,000 settlement was approved through the State Appeal Board to settle the claim on the default. Regarding the lease/purchase of the executive branch computer by the Department of General Services, the current situation is that there have been no funds appropriated to fulfill the state's obligation under this lease/purchase agreement. He noted that a failure to maintain the computer capacity needed for the executive branch is of great concern, but of even greater concern to him is the inability of the state at this point to honor the lease/purchase agreement regarding the executive branch computer. He stated that if the state would default on the lease/purchase agreement regarding the executive branch computer, the state may not be able to enter into a lease/purchase agreement regarding the construction of prison space. Even if such an agreement were entered into, the interest costs would probably increase by 15-20% due to a default by the state regarding the executive branch computer. His concern, he emphasized, is the effect of a default or potential default on the state's financial and credit ratings. Not only would the potential lease/purchase agreements regarding the prisons be affected, but also the potential agreements regarding the lease/purchase of telecommunications systems, which are contemplated under legislation enacted during the 1989 Legislative Session, could be greatly influenced by the state's behavior regarding its other lease/purchase agreements.

A second issue of great concern to the state's financial and credit ratings is the Governor's exercise of his item veto authority. He stated that the Governor's item veto of language regarding the "minimum security" nature of the new prison construction could undoubtedly cause investors to require a greater return on any lease/purchase agreements entered into regarding the construction of prison space. In addition, if a lawsuit is filed or if the filing of a lawsuit is believed to be imminent regarding the use of the item veto in relationship to the construction of prison space, a "chill" will be placed on the negotiations for the sale of bonds pursuant to any lease/purchase agreements regarding prison space. Treasurer Fitzgerald emphasized that what is needed is a consensus between the legislative and executive branches regarding lease/purchase agreements and the appropriation process. He noted that an ideal situation would involve the prior agreement by the executive and legislative Branches to the long-term financing of projects involving lease/purchase agreements.

Representative Jochum asked Treasurer Fitzgerald if Mr. Jack Walters, the Director of the Department of General Services, had notified him that the legislators involved and Mr. Walters had been conferring since the end of the legislative session regarding this issue. Treasurer Fitzgerald said that he was aware of this, but that his point was that the entire process and the end result this far have jeopardized the credit rating of the state. Vice-chairperson Avenson commented that Mr. Walters has in fact been informed that entering into lease/purchase agreements without prior legislative approval is a situation that cannot be tolerated and should not happen again. Vice-chairperson Avenson also noted that it is essential that the Governor use restraint in this area of lease/purchase agreements with regard to the use of his item veto authority.

Chairperson Hutchins stated that legislative leadership has discussed the issue and will consider at the beginning of the legislative session, a supplemental appropriation of approximately \$600,000 to cover the cost for this year under the lease/purchase agreement of the executive branch computer system. Representative Jochum commented that he had told Mr. Walters that even though he had some reluctance, he would be willing to abide by the decision reached by the legislative leadership regarding a supplemental appropriation. Representative Jochum also noted that he believes Mr. Walters is asking for an Attorney General opinion on the subject, but that he believes it is essential that the outcome of any discussions with the executive branch be an agreement between the branches that prior legislative approval is needed for all such projects involving lease/purchase agreements. Treasurer Fitzgerald stated that he would certainly agree with Representative Jochum's statement that close cooperation and coordination is absolutely essential before these agreements are entered into. If this does not happen, he stated, the result will be damaging to the long-term financing capability of the state.

Representative Lundby asked Treasurer Fitzgerald if the situation could be remedied by more adequate contractual language in the lease/purchase agreements. Treasurer Fitzgerald noted that the current language of these agreements states that the agreements are contingent on funding by the Legislature, but that, of course, future general assemblies cannot be bound by a decision of a prior general assembly. This is the reason why general obligation bonds are generally not used in this arena and why lease/purchase agreements are used. Moreover, he added that this is precisely the reason why a long-term agreement regarding such lease/purchase arrangements is necessary between the legislative and executive branches. Vice-chairperson Avenson noted that, indeed, there is a great need for a better process regarding these lease/purchase agreements. Senator Welsh noted that even though leadership has made a commitment to consider a supplemental appropriation, that the Legislative Council or a particular legislator cannot promise that the general assembly will, in fact, appropriate supplemental funds.

Responding to a question by Senator Welsh, Treasurer Fitzgerald said that in regard to the default on the lease/purchase of the cash registers, the initial claim against the state was approximately \$800,000 to \$1,000,000, but that the state finally settled the claim for approximately \$500,000. Senator Welsh also asked what the effect will be of the item veto of the language "minimum security" in regard to the issuance of bonds for the construction of prison space. Treasurer Fitzgerald said that the item veto will certainly be an issue to be considered by potential investors, and will be undoubtedly regarded as an additional risk, thus increasing the interest costs of financing such construction.

Representative Stromer asked if there had been statutory authority regarding the default on the lease/purchase of the cash registers. Treasurer Fitzgerald stated that to his knowledge there was no statutory authority regarding this particular lease/purchase agreement and that to his knowledge the executive branch did not ask the Legislature to appropriate funds to cover the cost of these agreements once default was imminent. Representative Stromer noted, however, that it was the Legislature that eliminated the state liquor stores so that the cash registers were no longer needed and that the Legislature was therefore, in part, responsible for the situation regarding the cash registers.

Chairperson Hutchins suggested that the issue regarding lease/purchase agreements be referred to the Fiscal Committee for the development of additional agreement language or the development of a process to remedy the problems encountered. Representative Stromer moved that the issues be so referred to the Fiscal Committee. Senator Husak asked about the total costs of the lease/purchase agreement for the executive branch computer. Senator Welsh stated that the agreement is for a five-year period and that the first-year cost to the state after receiving a credit for trading in the old computer equipment was somewhere around \$1,200,000. Senator Husak expressed his opinion that he would not, at present, be in favor of a supplemental appropriation to pay for the system. Representative Harbor stated that the Legislature has been placed in somewhat of a catch-22 situation since, if the Legislature does not act, the financial status of the state will be harmed and if the Legislature does act, it will be confirming earlier actions taken by the executive branch, regarding the purchase of the system, to which the Legislature had not agreed. Vice-chairperson Avenson stated that Treasurer Fitzgerald is indeed warning the Legislative Council that these types of actions regarding lease/purchase agreements must be jointly made by the legislative and executive branches and that the Governor must not use his item veto authority in such cases if the effect of the use of such authority will have a detrimental effect on the financial status or rating of the state. He noted that an extraordinary type of process is now necessary in these situations to maintain the state's credit rating.

The motion to refer the issue to the Fiscal Committee made by Representative Stromer was approved.

REPORT OF FISCAL COMMITTEE

Chairperson Hutchins recognized Representative Jochum for the Report of the Fiscal Committee. The Report is included in the Council packet and Representative Jochum described the four recommendations of the Fiscal Committee as recorded in the report. Chairperson Hutchins noted that the Studies Committee had taken up the Report of the Fiscal Committee and had recommended the approval of items one through three and proposed that item four be deferred and referred to the Legislative Procedures Committee. Representative Jochum moved that items one through three be approved and that item four be deferred. Chairperson Hutchins recommended that Representative Jochum's motion be deferred and that the recommendations of the report be taken up with the Report of the Studies Committee. Representative Jochum agreed to the suggested procedure and withdrew his motion.

REPORT OF SERVICE COMMITTEE

Chairperson Hutchins recognized Representative Connors for the Report of the Service Committee. The Report is included in the Council packet. Representative Connors explained the report and noted the following major recommendations:

1. That the proposed personnel guidelines be approved, except that the provisions relating to maternity and family leave be approved on an interim basis only, ending with the date of the next Legislative Council meeting.

2. That the payment of the additional hourly rate for independent legal counsel to represent the Citizens' Aide/Ombudsman in a pending federal civil rights lawsuit be approved.

3. That the purchase of computer hardware, which includes 25 personal computers at an approximate cost of \$75,000 to \$80,000, by the Director of the Legislative Fiscal Bureau, be approved.

4. That the filling of a vacancy in the position of Software Analyst 1 by the Computer Support Bureau be approved.

5. That the Director of the Computer Support Bureau be permitted to commence negotiations with respect to the acquisition of a fourth central processing unit for the legislative computer system.

6. That the Director of the Computer Support Bureau be authorized to purchase five to ten Sperry terminal emulator package boards and modems for use by members of the General Assembly.

7. That all changes in personnel positions, classifications, and grades recommended by the Legislative Service Bureau be approved.

In addition to the recommendations contained in the Service Committee Report, Representative Connors also noted that the report contains additional information which requires no Legislative Council action but which is required to be filed with the Service Committee and the Legislative Council.

Representative Connors moved that the report be approved. Representative Buhr asked if the Service Committee recommendations regarding maternity and family leave include provisions regarding insurance. Representative Connors stated that the newly adopted personnel guidelines do provide that insurance coverage will be continued for up to 30 days during leave without pay. He additionally noted that the entire maternity and family leave policy will be reevaluated in that it has only been adopted as an interim policy and that the insurance issue would be reconsidered.

The Service Committee Report was approved as submitted.

REPORT OF THE STUDIES COMMITTEE

Chairperson Hutchins recognized Vice-chairperson Avenson for the Studies Committee Report. The report was distributed to the members of the Legislative Council, and Vice-chairperson Avenson summarized the following recommendations contained in the report:

1. That approval be given to conduct an interim study regarding the staffing patterns at the institutions operated by the Department of Human Services.

2. That approval be given for a one-day visitation to meet with the State Board of Regents to review the concerns regarding the financial information system.

3. That the program evaluations conducted by the Legislative Fiscal Bureau include the participation of interested legislators.

4. That approval be given to conduct an interim study of Iowa's New Jobs Training Program.

5. That approval be given to conduct an interim study of Platting and Mortgage Surveys.

6. That approval be given to conduct an interim study of Subchapter S Corporations.

7. That the Legislative Procedures Committee be reestablished.

8. That approval be given to appoint an Air Link Transportation Commission to prepare requests for a consultant to

develop a contract that would be let for an Iowa-based company to provide for passenger air services in order to link Iowa's ten largest metropolitan areas.

9. That up to \$50,000 be made available to allow the Judicial Department to update the National Center for State Courts' study as it relates to medical malpractice and tort liability claims.

10. That up to \$200,000 be made available for a consultant contract to perform a comprehensive study of the health insurance needs of Iowans.

11. That the Legislative Fiscal Bureau be directed to conduct a program evaluation of the Chronic Renal Disease Program.

12. That the Legislative Service Bureau be directed to conduct a study of the needs for capitol complex child care.

13. That questions regarding the authority of the Citizens' Aide/Ombudsman office be referred to the Service Committee.

14. That the legislative leadership be granted authority to make appointments to the Brushy Creek Recreational Area Trails Advisory Committee and other study committees established by the Legislative Council.

Vice-chairperson Avenson also stated that the Studies Committee has received and filed other pertinent information, which is detailed in the Studies Committee Report.

Vice-chairperson Avenson moved that the Legislative Council approve the Studies Committee Report and discussion followed.

Regarding the appointment of Republican house members to the interim study committees, Representative Stromer asked if there was a likelihood that additional study committees would be created. Vice-chairperson Avenson stated that it was unlikely at this point that additional study committees would be created except in emergency situations. In that case, Representative Stromer noted that he would proceed in making his appointments.

Senator Welsh asked about the content of the study regarding Iowa's New Jobs Training Program. Vice-chairperson Avenson stated that the principal thrust of the interim study is a review of the House File 623 program regarding job-related training at the area schools. Senator Welsh commented that the Fiscal Committee may consider at its next meeting a recommendation to study the operations in general of the Department of Employment Services.

Representative Stromer asked about the makeup of the visitation committee to meet with the State Board of Regents. Senator Welsh answered that the makeup of this visitation committee is indeed not the normal makeup of a visitation committee.

Senator Hultman moved that the Studies Committee Report be approved as submitted and the motion was adopted.

ADDITIONAL BUSINESS

Representative Jochum requested on behalf of Senator Welsh and himself that the Legislative Council approve the payment of approximately \$10,892 in legal fees to the law firm of Galligan and Conlin relating to the item veto lawsuit which was filed and dropped. Representative Stromer asked Representative Jochum if the Legislative Council could be supplied with documentation of the hours spent by legal counsel on the lawsuit. Representative Jochum moved to amend his request in order that payment to the law firm be made only after the billable hours are made available upon request to any interested legislator. The motion by Representative Jochum for payment of the legal fees, upon receipt of a statement of hours, was adopted.

Senator Welsh asked that the Legislative Council consider authorization of independent legal counsel to examine the propriety of certain item vetoes by the Governor. Such legal counsel should be an authority in this area of constitutional law. He mentioned that a current lawsuit has still not been settled regarding the item veto authority of the Governor in regard to certain appropriation bills, but that certain items vetoed by the Governor in bills passed by the 1989 Session of the Legislature should be examined closely. He recommended that the Legislative Council authorize the Council chairperson to hire legal counsel to review the Governor's use of the item veto and to recommend whether or not it would be appropriate for the Council or individual legislators to file suit to clarify the issue of the propriety of certain of these item vetoes, particularly the item vetoes relating to the lease/purchase agreements regarding prison construction. Chairperson Hutchins suggested that perhaps the Service Committee could look into the issue of whether or not independent counsel was needed to assess the exercise of the item veto authority by the Governor. Representative Stromer mentioned that the mere retention of legal counsel will, of course, not resolve any issues, but that it will be necessary to go to court to resolve these issues. Senator Welsh suggested, therefore, that the Service Committee be authorized to recommend to the Legislative Council the hiring of independent legal counsel to assess the issues surrounding the item vetoes. In response to a suggestion by Representative Stromer that perhaps the Attorney General could be of some assistance, Senator Welsh stated that the Attorney General would not be suitable since the Attorney General is normally required to represent the executive branch. Representative Chapman agreed with this assessment of the normal responsibility of the Attorney General. Vice-chairperson Avenson suggested that perhaps the Service Committee could discuss the hiring of independent legal counsel with the House and Senate legal counsels. Senator Hultman suggested that perhaps the Service Committee could initially talk to attorneys who could then

be retained by the Legislative Council. In response to a question from Chairperson Hutchins regarding the retention of legal counsel by the Governor in suits between the two branches, Senator Welsh stated that to his knowledge, the Governor always retained legal counsel and then later asked for reimbursement by the Executive Council of fees at a rate higher than normally approved by the Executive Council. Senator Welsh moved his suggestion that the Service Committee investigate whether or not it would be in the best interests of the Legislature to hire independent legal counsel to assess the issue of the proper use by the Governor of his item veto authority. The motion was approved with a request that, if possible, the Service Committee report to the Legislative Council regarding this issue in July.

ADJOURNMENT

There being no further business to come before the Council, the meeting was adjourned at 3:45 p.m.

Respectfully submitted,

DIANE BOLENDER,
Acting Secretary to the Legislative Council

RICHARD JOHNSON,
Legal Division Chief, Legislative Service Bureau