



MINUTES

Iowa Legislative Council

June 30, 2003

First Meeting of the 2003-2004 Biennium

MEMBERS PRESENT:

Speaker Christopher Rants, Chairperson
Senator Stewart Iverson, Jr., Vice Chairperson

Senator Jeff Angelo
Senator Joe Bolkcom
Senator Mike Connolly
Senator Robert Dvorsky
Senator Thurman Gaskill
Senator Michael Gronstal
Senator Mary Kramer
Senator Jeff Lamberti
Senator Amanda Ragan
Senator Neal Schuerer
Senator Doug Shull

Representative Danny Carroll
Representative John Connors
Representative Bill Dix
Representative Chuck Gipp
Representative Sandra Greiner
Representative Gene Manternach
Representative Pat Murphy
Representative Richard Myers
Representative Janet Petersen
Representative Rod Roberts

MEETING IN BRIEF

.....
Dennis Prouty, Secretary to the
Legislative Council,
(515) 281-3566
dennis.prouty@legis.state.ia.us

Organizational staffing provided by:
Richard Johnson,
Deputy Director,
(515) 281-3894
richard.johnson@legis.state.ia.us

Minutes prepared by: Susan
Crowley, Senior Legal Counsel,
(515) 281-3430
susan.crowley@legis.state.ia.us

- I. Procedural Business.
- II. Litigation.
- III. Report of the Service Committee.
- IV. Rules for Prefiling Bills – 2004 Session.
- V. Reports of the Legislative Fiscal Committee, the Oversight Committee, and the International Relations Committee.
- VI. Report of the Studies Committee.
- VII. Court Rules Changes.
- VIII. Educational Leave.
- IX. Help America Vote Act.
- X. Representative Myers.
- XI. Attachments.



I. Procedural Business.

Call to Order. The first meeting of the 2003-2004 Legislative Council was called to order by Temporary Chairperson Christopher Rants at 11:00 a.m., Monday, June 30, 2003, in Room 22, State Capitol, Des Moines.

Election of Chairperson and Vice Chairperson. Representative Gipp moved that Representative Rants and Senator Iverson, the temporary chairperson and temporary vice chairperson, respectively, be elected permanent chairperson and vice chairperson. Representative Myers seconded the motion. The motion was adopted by voice vote.

Proposed Rules for Legislative Council. The Council considered proposed rules for Legislative Council previously distributed. Senator Kramer moved adoption of the proposed rules. Representative Greiner seconded the motion. In response to a question by Representative Connors, Chairperson Rants stated that the rules were identical to the rules adopted by the previous biennial Council. The rules were adopted by voice vote. A copy of the Rules of the Legislative Council are attached to these minutes.

Minutes of June 18, 2002, Meeting. Senator Gronstal moved that the minutes of the meeting of June 18, 2003, be approved. There being no additions or corrections, Representative Myers seconded the motion. The motion was adopted by voice vote.

Adjournment. Representative Myers moved that the Legislative Council meeting adjourn at 12:20 p.m. The motion was seconded and adopted by voice vote.

II. Litigation.

Gipp Motion. Chairperson Rants recognized Representative Gipp who made the following motion:

That the Legislative Council approve the retention of an attorney to provide legal and litigation services to the Legislative Council regarding a possible challenge to the constitutionality of the Governor's item vetoes of House File 549, the omnibus education bill, and of House File 692, the grow Iowa values policy bill, to be compensated upon the submission of monthly billings, with payment to be made pursuant to Iowa Code sections 2.12 and 2.12A. The Chairperson and Vice Chairperson of the Legislative Council shall procure the services of an attorney and shall provide direction to the attorney with regard to the legal representation.

The motion was seconded by Senator Kramer.

Representative Myers stated his opposition to one branch of government suing another, particularly in this situation where the General Assembly has the authority to override the Governor's vetoes, and expressed his concern regarding the potential expenses of this litigation. Chairperson Rants responded that the cost to taxpayers of retaining legal counsel to challenge the Governor's item vetoes is one of the issues to be considered when retaining a law firm. He noted that the court under the statute will need to authorize legal fees, relating to court proceedings, that it considers fair and appropriate.



Senator Gronstal raised the question of oversight of the legal costs incurred and who would be providing that oversight. He noted that the last time the Governor was sued the cost was upwards of \$500,000. Chairperson Rants replied that the chairperson and vice chairperson of the Legislative Council would keep members informed in that regard and that monthly billings would be submitted for approval. He noted that the motion to authorize the payment of legal fees before they are incurred is a departure from past practice which has been to incur legal counsel expenses and then to request reimbursement by the Legislative Council. Senator Gronstal noted that the motion before the Council cedes the decision-making authority regarding retention of legal counsel and payment of fees to the chairperson and vice chairperson. Chairperson Rants responded that consultations with members regarding the choice of a law firm to represent the Legislative Council would be in order.

Senator Gronstal expressed his concern that the legal counsel retained may recommend, as part of the legal strategy, to enjoin implementation of the Grow Iowa Values Fund and asked if such a legal strategy would come before the Legislative Council for approval. Chairperson Rants stated that he did not think that question would need to come before the Council and he would not agree to take that step, although he commented that conversations with individual members of the Council regarding recommendations for legal action would probably be appropriate. He noted that the legal issue to be addressed is the constitutionality of item vetoes of two bills that the General Assembly considered to be policy bills and not appropriations bills.

Senator Connolly questioned whether the chairperson and vice chairperson had considered using inside counsel. Chairperson Rants replied that he had contacted the Attorney General's Office and was informed that the Attorney General's Office would typically represent the executive branch in such litigation. He further noted that past precedent has been for the General Assembly to retain outside legal counsel.

Connolly Amendment to Gipp Motion. Senator Connolly moved to amend the Gipp motion, stating that the Gipp motion should include a competitive bidding requirement and a cap on expenditures for legal fees. In response to a question from Chairperson Rants, Senator Connolly stated that the elements of the competitive bidding process would be for the interviewers of the law firms to determine. Chairperson Rants expressed concerns about imposing a cap on legal fees with regard to restraining the negotiation stance of the members involved in interviewing law firms and the possibility that the cap would become an expenditure target. Senator Connolly opined that many law firms would view it as an honor to represent the General Assembly in this litigation and would adjust their legal fees accordingly.

Representative Gipp urged rejection of the Connolly amendment and stated that competitive bidding for retention of a legal firm may not be productive given that leadership has already contacted a number of firms which have recused themselves from

consideration because they have other business with the state that could create a conflict of interest. Representative Gipp stressed that the issue to be litigated is a constitutional issue involving the separation of powers between the executive and legislative branches of government that will have an effect in the future regardless of which political party is in control. Vice Chairperson Iverson concurred, noting that the issue of exactly what is an appropriation bill subject to item veto is an important constitutional issue to be resolved by the Supreme Court. In response to a question by Senator Connolly, Representative Gipp indicated that he



would still resist the Connolly amendment even if it was restated to eliminate the cap on legal fees.

Representative Murphy pointed out that even with a competitive bid requirement and a cap on legal fees, the Legislative Council could, at a future date, consider extending the cap. Senator Bolckcom stated that a cap on legal fees would operate as a disincentive to a law firm from charging exorbitant legal fees. Chairperson Rants responded that it is hoped that estimates of costs will be obtained in interviews with law firms and noted that the vice chairperson and he intend to update the Legislative Council regarding the costs of litigation. Senator Gronstal spoke in support of using competitive bidding and bringing the matter of legal counsel retention back to the Legislative Council for final action.

Senator Connolly requested that his motion be divided into two amendments. The first amendment would require competitive bidding. The second amendment would impose a cap on legal fees of not to exceed \$200,000.

Connolly Amendment Regarding Competitive Bidding. Regarding the first amendment, Representative Carroll stated that, on the surface, requiring competitive bidding sounds good, but that such bidding is most appropriate when a project has detailed specifications and industry standards. He noted that competitive bidding is often not appropriate for retention of professional services and averred that some law firms simply will not participate in a competitive bid process. He stressed that the Council should be more concerned with the qualifications and experience a law firm possesses and not with the lowest bid. Representative Myers remarked that, in his experience in private business, competitive bidding for professional services does occur even though professionals do not necessarily like that process.

There being no further discussion, Senator Connolly called for a record roll call vote on the amendment. The amendment was defeated with 14 nays and 9 ayes.

Connolly Amendment Regarding a Cap on Legal Fees. Regarding the second Connolly amendment, Representative Carroll stated that imposing a cap would be tantamount to informing the opposing side of the amount the General Assembly is willing to spend to litigate this matter. Representative Myers said a cap will inform the general public of the amount of taxpayer dollars the General Assembly plans to spend on legal representation. Representative Petersen moved to amend the Connolly amendment to provide for a cap on legal fees of not to exceed \$200,000 "without further approval of the Legislative Council." Vice Chairperson Iverson noted that the Legislative Council could revisit such a cap at any time without such a motion being approved at this meeting. Representative

Petersen withdrew her motion.

In final remarks on his amendment, Senator Connolly stated that a cap gives the general public assurance that the General Assembly will be monitoring legal costs. There being no further discussion, Senator Connolly called for a record roll call vote on the amendment. The amendment was defeated with 14 nays and 9 ayes.

Connolly Amendment Regarding a Bipartisan Interview Committee. Chairperson Rants called for further discussion on the Gipp motion. Senator Connolly stated his opinion that the leaders of the minority party should be involved in the interviewing of law firms. Chairperson Rants assured him that the vice chairperson and he intend to communicate with the minority



leaders during the interview process. Senator Connolly moved to amend the Gipp motion to provide for a bipartisan interview committee. Representative Connors seconded the motion.

Iverson Substitute Amendment. Vice Chairperson Iverson moved a substitute amendment to the Connolly amendment which would call for the chairperson and vice chairperson of the Legislative Council to consult with minority party leaders throughout the process. The motion was seconded by Representative Greiner. Senator Gronstal noted that such consultation has not taken place thus far and that he wants to be engaged in the discussion with the attorneys on the strategy to be used should litigation ensue. Representative Murphy also voiced opposition to the Iverson amendment. The Iverson amendment to the Connolly amendment was adopted by voice vote. Senator Connolly withdrew his motion as amended.

Final Action on Gipp Motion. Further discussion was had on the Gipp motion. Representative Myers stated that the General Assembly has often placed caps on local government spending and has required that local governments engage in competitive bidding and that requiring a competitive bid process in this case should be no different. He also voiced his strenuous objection to the notion of the General Assembly suing anyone, especially if pursuing a partisan goal. Senator Dvorsky stated his opposition to the Gipp motion, saying that the General Assembly already possesses the power to override a governor's veto.

In his final remarks on his motion, Representative Gipp noted that a law firm would be retained to consider a possible challenge to the Governor's item veto authority but that the decision to file suit has not yet been made. There being no further discussion, Representative Gipp called for a record roll call vote on the motion. The motion was adopted with 14 ayes and 9 nays.

III. Report of the Service Committee.

Chairperson Rants recognized Senator Kramer for the Report of the Service Committee. Senator Kramer moved the following amendment to the Service Committee report:

That item #5 regarding the central staff agency budgets be amended to increase the budget of the Legislative Services Agency (LSA) by \$30,000, to pay the

membership dues for FY 2003-2004 for Iowa's three commission representatives to the National Conference of Commissioners on Uniform State Laws (NCCUSL), and to increase the budget of the Office of Citizens' Aide/Ombudsman (CA/O) by \$3,000, for FY 2003-2004, to pay for out-of-state travel.

The motion was seconded and adopted by voice vote.

Senator Kramer moved that the Report of the Service Committee, as amended, be adopted. The motion was seconded and adopted by voice vote. A copy of the Report of the Service Committee, as amended by the Council, is attached to these minutes.

IV. Rules for Prefiling Bills – 2004 Session.

Chairperson Rants recognized Mr. Richard Johnson, Deputy Director, Legislative Services Agency, regarding the Rules for Prefiling Legislative Bills for the 2004 Session. Mr. Johnson stated that changes have been made from last year's rules. First, the rules are made permanent and do not contain specific dates, but rather recite the statutory deadlines for executive branch requests and establish deadlines for legislator requests based on a certain



day and month. He informed the Council of the major deadlines and other dates described in the rules for the 2004 Session. Second, Mr. Johnson noted that the list of authorized prefilings agencies is corrected to include the Department of Administrative Services and the Iowa Lottery Authority. Third, Mr. Johnson stated that language is added to the Rules to provide that requests for drafting of legislative bills for extraordinary sessions by both legislators and the Governor are subject to any restrictions established by the Senate or House of Representatives, and that that first priority in drafting is generally given to the bills being prepared for committee consideration or requested by legislative leaders.

Representative Connors moved that the Rules for Prefiling Bills be adopted. Representative Petersen seconded the motion. The motion was adopted by voice vote. A copy of the Rules for Prefiling Legislative Bills for the 2004 Session is attached to these minutes.

V. Reports of the Legislative Fiscal Committee, the Oversight Committee, and the International Relations Committee.

Chairperson Rants stated that no action was required on the Reports of the Legislative Fiscal Committee, the Oversight Committee, and the International Relations Committee and that the minutes would reflect that the Council received the reports. A copy of each of the reports of the three committees is attached to these minutes.

VI. Report of the Studies Committee.

Chairperson Rants recognized Vice Chairperson Iverson for the Report of the Studies Committee. Vice Chairperson Iverson moved adoption of the studies proposal and the Guidelines for Interim Study Committees. The motion was seconded and adopted by voice vote.

VII. Court Rules Changes.

Chairperson Rants again recognized Mr. Johnson regarding a change in Iowa Court Rules. Mr. Johnson stated that the suggested change related to taxation of court costs and required the clerk of district court to contact the judicial officer before taxing costs against a plaintiff. Mr. Johnson noted that the Council could either receive and file the rule change or delay implementation of the rule. A motion was made to receive and file the rule change. The motion was seconded and adopted by voice vote. A memorandum containing the proposed court rule change is on file with the Legislative Services Agency.

VIII. Educational Leave.

Chairperson Rants recognized Mr. Dennis Prouty, Director, Legislative Services Agency, who stated that a report on employees who have taken educational leave is on file with the Legislative Services Agency and available to Council members upon request.

IX. Help America Vote Act.

Chairperson Rants recognized Senator Gronstal who made the following motion:



That the Legislative Council approve the expenditure of \$400,000 from the appropriations made to the General Assembly pursuant to Iowa Code section 2.12, in order to draw down federal funds pursuant to the federal Help America Vote Act, Pub. L. No. 107-252, for use by the State Commissioner of Elections for voter education, election official education and training, poll worker training, and updating of voting systems.

In support of his motion, Senator Gronstal stated that on October 1, 2003, the beginning of the next federal fiscal year, Iowa's opportunity to draw down \$8 million in federal money appropriated for the 2002-2003 federal fiscal year disappears. Approving this expenditure will avoid a local property tax increase, he said, because the Help America Vote Act (HAVA) must be implemented regardless of whether state funds are appropriated or federal funds received. Senator Bolkcom stated his support for the motion, and reminded the Council that House File 614, the legislation implementing the HAVA changes, does not contain an appropriation to secure federal matching funds. Senator Iverson stated that it is premature to appropriate or authorize expenditure of funds at this time because the Governor has not yet taken action on House File 614.

There being no further discussion, Senator Gronstal called for a record roll call vote on the motion. The motion was defeated with 13 nays and 9 ayes.

X. Representative Myers.

Chairperson Rants recognized Representative Connors who expressed the Council's gratitude for Representative Myers's service to the General Assembly, emphasizing that Representative Myers had worked hard to restore bipartisanship in the House of Representatives. Representative Myers thanked the Council and, hoping to avoid a show of sentimentality, moved that the meeting adjourn.

XI. Attachments.

- A. Rules of the Legislative Council.
- B. Report of the Service Committee.
- C. Rules for Prefiling Bills - 2004 Session.
- D. Report of the Legislative Fiscal Committee.
- E. Report of the Oversight Committee.
- F. Report of the International Relations Committee.
- G. Report of the Studies Committee.

3463LC