



# Iowa General Assembly

## 2003 Legal Updates

Legislative Services Agency – Legal Services Division

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**Purpose.** *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

### THE CONSTITUTIONALITY OF THE GOVERNOR'S ITEM VETO OF PROVISIONS OF HOUSE FILE 692

Filed by the Iowa District Court for Polk County  
December 1, 2003

Rants et al v. Vilsack, No. CV4838

**Background.** At the start of the 2003 legislative session, the Governor called for the creation of an Iowa Values Fund, designed to stimulate the state's economic development efforts. The Governor requested that the General Assembly approve legislation creating the Fund, including a \$500 million appropriation. The leadership of the General Assembly sought to include with the Iowa Values Fund legislative changes to the tort liability system affecting punitive damages; remedies for workers' compensation; a reduction in income taxes; and the postponement of a phase-out of sales tax on residential utilities. The Governor opposed the inclusion of these measures in the Iowa Values Fund legislation. The Governor and General Assembly were unable to successfully negotiate a compromise during the regular legislative session.

As a result, the Governor called the General Assembly back into special session to continue work on the Iowa Values Fund legislation. Again, the Governor and General Assembly were unable to come to agreement. As a result, the General Assembly drafted and passed two bills, House File 683 (2003 Iowa Acts, First Extraordinary Session, chapter 2) and House File 692 (2003 Iowa Acts, First Extraordinary Session, chapter 1). House File 683 contained a \$45 million appropriation of state funds for the Grow Iowa Values Fund. House File 692 created the Grow Iowa Values Fund and created administrative apparatus for the management of the Fund, as well as regulatory and tax policy favored by the leadership of the General Assembly and strongly opposed by the Governor. A number of the regulatory and tax policy provisions in House File 692 were item vetoed by the Governor. In June 2003, the Legislative Council authorized the procurement of independent legal council for a lawsuit questioning the validity of the item vetoes.

**District Court Proceedings and Decision.** The plaintiffs filed a motion for summary judgment seeking a declaration that the Governor's item vetoes of provisions of House File 692 were unconstitutional in that House File 692 was not an appropriations bill. The defendant filed a cross-motion for summary judgment seeking a declaration that House File 692 was indeed an appropriations bill subject to the Governor's item veto authority.

The District Court made the determination that House File 692 is an appropriation bill and denied plaintiffs' motion for summary judgment and granted the Defendant's motion for summary judgment.

**Analysis.** The District Court, utilized the reasoning set out by the Iowa Supreme Court in *Junkins v. Branstad*, 448 N.W. 2d 480 (Iowa 1989). The District Court stated that an appropriation occurs if there is an allocation of funds, whether from the General Fund or a revenue producing bill, into a separate and distinct fund which can only be utilized for other purposes upon subsequent legislation and identified the following provisions of House File 692 as being appropriations:

- Allocation of interest, loan repayments, failed loans and grants, and fund balances as these relate to the Grow Iowa Values Fund.
- Authorization to pay actual and per diem expenses of certain boards and commissions.

- Increased assessment for failure of employers to provide certain information with such assessment allocated to the Second Injury Fund.
- Extension of the Administrative Contribution Surcharge to be deposited into the Administration Contribution Surcharge Fund.
- The personal income tax provisions. These provisions “call for the imposition of income taxes, although at a lower rate than in previous years. The income taxes withheld from employees’ salaries are collected from employers and allocated into the Appropriable Receipts Account.”

The District Court noted that the appropriations at issue in Junkins totaled less than \$750,000 while the amount in House File 692 was far in excess of that total. This fact answers the question of whether the appropriations significantly affect the Governor’s budgeting responsibility, a requirement set out in Junkins. In addition, the District Court did not agree with the Plaintiffs’ contention that the definition of “appropriation” must include the additional requirement that authorization to expend the funds without further action be present.

In addition, the District Court, while noting that such a conclusion was not necessary to reach its decision, nevertheless concluded that the two bills, House File 683 and House File 692, were indivisible in the sense that the appropriation of \$45 million in House File 683 was made contingent upon unrelated policy provisions in House File 692. The District Court reasoned that the practice of attaching unrelated riders to appropriation bills has been condemned by the Iowa Supreme Court in a 1985 item veto case (*Colton v. Branstad*) which approved the item veto of such unrelated provisions.

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