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**STATE OF IOWA**

**Senate Journal**

**WEDNESDAY, JANUARY 12, 2005**

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## JOURNAL OF THE SENATE

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THIRD CALENDAR DAY  
THIRD SESSION DAY

Senate Chamber  
Des Moines, Iowa, Wednesday, January 12, 2005

The Senate met in regular session at 8:35 a.m., President Lamberti presiding.

Prayer was offered by the Honorable Stewart E. Iverson, Jr., member of the Senate from Wright County, Dows, Iowa.

The Journal of Tuesday, January 11, 2005, was approved.

### RECESS

On motion of Senator Gronstal, the Senate recessed at 8:37 a.m. until the completion of a meeting of the committee on Rules and Administration.

### RECONVENED

The Senate reconvened at 8:45 a.m., President Lamberti presiding.

The Senate stood at ease at 8:46 a.m. until the fall of the gavel.

The Senate resumed session at 9:46 a.m., President Lamberti presiding.

### COMMITTEE FROM THE HOUSE

A committee from the House appeared and announced that the House was ready to receive the Senate in joint convention.

In accordance with [House Concurrent Resolution 2](#), duly adopted, the Senate proceeded to the House chamber under the direction of the Secretary of the Senate and the Sergeant-at-Arms.

#### JOINT CONVENTION

In accordance with law and [House Concurrent Resolution 2](#), duly adopted, the joint convention was called to order at 9:52 a.m., President Lamberti presiding.

Senator Gronstal moved that the roll call be dispensed with and that the President of the joint convention be authorized to declare a quorum present, which motion prevailed by a voice vote.

President Lamberti declared a quorum present and the joint convention duly organized.

Senator Gronstal moved that a committee of seven, four members from the Senate and three members from the House, be appointed to escort Governor Thomas J. Vilsack to the Condition of the Iowa Judiciary Message.

The motion prevailed by a voice vote and the Chair announced the appointment of Senators Angelo, Kreiman, McKibben, and Horn on the part of the Senate, and Representatives Kaufmann, Soderberg, and Pettengill on the part of the House.

Senator Gronstal moved that a committee of seven, four members from the Senate and three members from the House be appointed to notify the Honorable Louis A. Lavorato, Chief Justice of the Iowa Supreme Court, that the joint convention was ready to receive him.

The motion prevailed by a voice vote and the Chair announced the appointment of Senators Boettger, Fraise, Miller, and Rielly on the part of the Senate, and Representatives Paulsen, Baudler, and R. Olson on the part of the House.

Secretary of State Chet Culver, Treasurer of State Michael Fitzgerald, Secretary of Agriculture Patty Judge, Auditor of State David A. Vaudt, and Attorney General Tom Miller were escorted into the House chamber.

Lieutenant Governor Sally J. Pederson was escorted into the House chamber.

The Justices of the Supreme Court, Chief Judge Rosemary Shaw Sackett and the Judges of the Court of Appeals, and the District Court Chief Judges were escorted into the House chamber.

Mrs. Janis Lavorato, wife of the Chief Justice; his daughter-in-law, Lori Lavorato; his stepdaughter, Jenna Green; his sister-in-law, Delayne Johnson; and his brother-in-law, Edward Busing, were escorted into the House chamber.

The committee waited upon Governor Thomas J. Vilsack and escorted him into the House chamber.

The committee waited upon Chief Justice Louis A. Lavorato and escorted him to the Speaker's station.

President Lamberti then presented Chief Justice Louis A. Lavorato, who delivered the following Condition of the Iowa Judiciary Message:

It is indeed an honor and a privilege to address this assembly each year. Thank you for the invitation. In return, I'd like to extend an invitation to you. I invite everyone to join us for refreshments and conversation downstairs in the courtroom following my remarks.

I would also like to extend a warm welcome to the new legislators. I look forward to meeting each of you and hope you'll feel free to call on us if you have questions about the administration of the courts.

Now, I would like to turn our attention to the state of the judiciary.

This annual report is our best opportunity to inform you about the condition of our state court system, its strengths, and its weaknesses. This is important because our system of government calls upon all three branches, in differing roles, to contribute to the administration of justice. Our role is to promptly but carefully decide cases according to law, equally to all. However, it is up to you—the Legislature and the Governor—to provide the tools and resources we need to carry out our enormous responsibilities.

Over the years, we have enjoyed a relationship of candor, cooperation, and mutual respect, and I address you in that spirit again today. In my previous messages, I have reported that despite financial hardships brought on by budget cuts, the Judicial Branch was managing to fulfill its responsibilities to the public. My report this year, however, is less than favorable. Although we are continuing to provide basic court

services, our resources are spread painfully thin, and the cumulative effects of five years of fiscal austerity have begun to show. The quality of justice in Iowa is at risk.

#### History of Budget Cuts

For the benefit of those of you who are not familiar with the details of the budget cuts, I will explain how we reached this point. Let's go back to fiscal year 2001.

That year, the state's problem with the health insurance terminal liability fund resulted in a shortfall of about \$2.4 million for the Judicial Branch. We balanced our budget through a variety of measures, and we carried on. Near the end of the fiscal year, state revenues dropped unexpectedly, and to cover the deficit, you transferred money from several sources, including \$4 million from our earmarked technology fund.

We began fiscal year 2002 with a flat, or status quo, operating budget. But as you know, that year state revenues took a turn for the worse, and the Legislature met in special session to implement severe across-the-board cuts. Our share of that cut was \$5.2 million. Balancing our operating budget that year required drastic and unprecedented action. We cut deep and wide. We laid off 117 employees, eliminated 20 vacant positions, downgraded the positions of 79 supervisory employees, and reduced the hours of 67 employees. In addition, we implemented a hiring freeze, eliminated some highly regarded programs, and imposed other stringent cost-saving measures. Good people lost their jobs; others took a large pay cut. These were difficult decisions to make. But we made them, and we carried on.

More cuts followed as the state's budget crisis lingered. In March 2002, we sustained another cut of \$2.2 million, and fiscal year 2003 brought yet another cut—\$2.1 million. We cut whatever we could without disrupting service, and we carried on.

Fiscal year 2004 was more or less status quo. The current fiscal year, however, is a different matter.

#### FY 2005 Budget Problems

In July, we implemented approximately \$5 million worth of cost-cutting measures. This was necessary because of a flat appropriation and rising expenses. All of our increased expenses this fiscal year spring from higher personnel costs.

First, we must pay nearly \$2.5 million for increases in health and dental insurance premiums, the deferred compensation program match, and salary increases approved in the previous year and carried over to the current year.

In addition, our collective bargaining contract with two unions costs about \$1 million for salary increases to our contract employees. We tried to defer this expense. Last summer, the state court administrator asked both unions to accept a salary freeze for the current year. They rejected the request, and of course we must honor the contracts.

Once the matter of raises for contract employees was settled, we decided to approve similar raises for noncontract employees. Although this cost another \$1.3 million, it was the right thing to do. If we had not treated both groups of employees the same,

noncontract employees would have paid a disproportionate price in terms of the budget cuts.

In the past, personnel expenses such as those I described have been covered by salary adjustment funds appropriated in the annual state salary bill. Last session, however, you and the Governor chose not to provide salary adjustment funds to anyone, and consequently, as I mentioned earlier, we had to absorb about \$5 million.

This leads me to the steps we took to balance our budget this fiscal year.

#### Unpaid Leave and Office Closures

To operate within the parameters of our appropriation, the court ordered a variety of cost-cutting measures. Because personnel expenses account for 96 percent of our operating budget, we had few choices but to balance the budget on the backs of our employees.

This year, the biggest cut in our budget resulted in eight days of mandatory unpaid leave for all nonjudicial employees. Because our rural offices are not sufficiently staffed to allow for staggered implementation of the unpaid leave, we chose to enforce the unpaid leave for everyone at the same time. On days of unpaid leave, all of our offices are closed. To lessen the effect of these closures on the public, the court scheduled them, as much as possible, on federal and county holidays, and on Fridays.

The court considered, but rejected, more layoffs as a way to reduce expenses. Since we cut our workforce by 11 percent in fiscal year 2002, we have operated with minimum staffing levels. Additional layoffs would cripple our ability to provide basic services, particularly in the rural areas of the state.

#### Holding Open Vacant Positions and Judgeships

In addition to the money saved by office closures and forced leave, we continue to hold down expenditures by holding open jobs when they become vacant. We have relied heavily on this measure since the state's budget problems first began. There have been times when we have held open as many as 70 positions, or about 5 percent of our nonjudicial workforce.

This year we had to take this policy one step further. Beginning this year, judgeships will not be filled for six months after they become vacant. This unprecedented action is a far cry from our practice of having new judges ready to take over on the date a vacancy occurs, but we have little choice. And this comes when the statutory formula for district judgeships shows we are thirty judges short.

#### Substantial Travel Cuts

On top of everything else, we have again cut our travel budget, nearly all of which we need just to ensure that all 99 counties see a district judge, court reporter, and juvenile court officers on a regular basis.

Pardon this digression, but I must tell you I was quite surprised to read in the newspaper last month that the amount spent on travel by state agencies has increased

significantly in recent years. In stark contrast, Judicial Branch travel expenses have decreased nearly 22 percent in the past four years.

#### Impact on Public Service

I've heard it said by some legislators that the courts have not sacrificed enough. I say: Look at the facts. The magnitude of the cuts I have just described clearly demonstrates that we have done our part to lessen the state's budgetary woes. We have slashed our expenses to the bone and managed as best we can with the resources you have provided. Now the public is beginning to pay too high a price for the dollars we've saved. They are being short-changed.

This is the first time in Iowa's history that courts have closed for lack of funds. We all should be alarmed any time courthouse doors are closed to those seeking justice.

The closures of clerk of court offices result in delays in case processing, and other vital services such as forwarding child support payments to parents, sending copies of court orders and notices of hearings, and providing up-to-date criminal history data to law enforcement.

Ruth Godfrey, Pottawattamie County Clerk of Court, says: "There have been times when notices for hearings were not issued in a timely manner; people didn't show up for hearings, and arrest warrants went out."

Closing clerk of court offices hinders many businesses that depend on information contained in court records. According to Jim Rosendahl, owner of Estherville Abstract, the court closure days have delayed real estate transactions, including the purchasing of homes.

Some jury trials have been prolonged because of closure days. This is more than a mere inconvenience for litigants, witnesses, and jurors. It means one more day away from their workplace or business, as well as more time away from family responsibilities.

Because of the cuts and closures, juvenile court officers have less time and opportunity to check on juvenile offenders. Juvenile Court Officer Al Blair tells me that the frequency of juvenile court services in Wright County was reduced this fall from two days a week to once a week. Also, he cannot visit juveniles placed in group care or at Eldora on a regular basis.

Judges are traveling less to provide court services. Take for example, the juvenile court schedule for the Fourth Judicial District, which covers the southwest corner of the state. For years, eight of the nine counties in the district have had the service of a juvenile court judge one day a month. To begin with, this is not very often. Now these eight counties have a juvenile judge one day every other month. As a consequence of this reduced schedule, juveniles remain in detention longer.

Our chief juvenile court officers indicate that the travel cuts and disruptions in service undermine our ability to hold juvenile offenders accountable for their actions. At a minimum, these service gaps increase expenses for county and state government, but ultimately the public pays the price in terms of diminished safety.

The travel cuts are causing problems for civil litigants as well. These cases involve dissolution of marriage, child support, personal injury, property damage, and contracts. For a few months this year, some counties without a resident judge did not have trials for nonjury civil cases. Litigants had to make a difficult choice: either travel to another county for a hearing where a judge is available or have their cases delayed. Either choice increases the cost of litigation.

Manchester Attorney Stephanie Rattenborg can attest to this. When faced with this dilemma, two of her clients, one who was involved in a paternity suit, and another who was a party in a dissolution of marriage action, decided to have their hearings as soon as possible. Attorney Rattenborg says: "My clients had to pay me significantly more in attorney fees to travel to and from the hearings. In addition, witnesses had to endure the significant inconvenience of further travel to be available to testify."

There are other reasons litigants must wait longer for resolution of their cases. As a result of cuts in support staff, judges must spend time retrieving court files, calling parties and witnesses waiting in courthouse corridors for trials, and making copies of documents. When judges must do these things, they have less time for hearings and decision making. This is not a question of whether or not a judge is above doing these things. It is simply a question of the most efficient use of the state's valuable and scarce judicial resources.

Because our clerk of court offices are overwhelmed with work, we've cut some services that, while important, are nevertheless discretionary. This summer the chief judges of the judicial districts ordered clerks to stop finding hospital placements for persons subject to involuntary commitment orders. This freed up time that clerks desperately need for other duties. Fortunately for people with mental health or substance abuse problems and their families, county officials, hospitals, and mental health providers stepped in to take over.

The extremely high vacancy rate we've maintained in recent years leaves many offices, particularly clerk of court offices, severely understaffed. This money-saving measure coupled with the forced leave days lowers productivity, causes more delays, and increases the risk of costly errors.

Craig Jorgensen, Woodbury County Clerk of Court says: "Thoroughness, accuracy, and dependability have been compromised, and timeliness is a constant struggle."

As you can see, services are eroding, delays are mounting, and access is decreasing. The short-term improvement in our bottom line will cost dearly in the long run; ultimately, the burden of the budget cuts falls on the public.

There are those who say we can solve these problems by working smarter and managing better. They simply do not know what has been going on. Because we take our stewardship of public funds seriously, we have done everything in our power over the years to streamline operations, stretch our resources farther, and reduce the cost of running the court system while maintaining quality service. And although we will continue to search for ways to operate more efficiently, efficiency measures won't fix the serious problems I've described.



### Wheels of Justice

Remarkably, we continue to accomplish a great deal even within the confines of our limited means. Last year, our courts disposed of about one million cases that covered the gamut of issues, from felonies to family law, delinquency to domestic abuse, and traffic violations to torts.

Under the circumstances, you may wonder how the courts keep up to the extent that we do. All the credit for this belongs to our steadfast judges, magistrates, and staff. Faced with dwindling resources and an endless amount of work, they carry on undaunted, doing all they can to keep the justice system running as smoothly as possible. And they do so with dignity.

While we are immensely grateful for their sacrifices and devotion and heartened by their indomitable spirit, we must face reality. Even the most productive and determined person can shoulder only so much. There comes a point when quality suffers and productivity drops.

If we stay on this path, court services won't necessarily come to a screeching halt. However, the result will be a steady erosion of access, service, and quality. We'll see more of the problems I described earlier, and they will snowball.

### Funding Justice

With your help, we can stop this decline and prevent these problems. All it takes is a reasonable boost in operating funds and sufficient salary adjustment funds to cover rising personnel expenses. Naturally, we are fully aware of the state's budgetary constraints and recognize the continued need for frugality. Therefore, we suggest only those improvements that are absolutely necessary and well within your means.

We recommend a modest supplemental appropriation that would be enough to restore basic services for the remainder of this fiscal year. For fiscal year 2006, we seek just enough to meet the public's demand for access and quality. The details of our recommendations are contained in our budget request that we submitted to you last month.

### Importance of a Strong and Independent Judiciary

We, of course, know of the many demands being made upon you, and we appreciate the tough choices you are called upon to make. We trust that you appreciate the vital nature of our work and the serious consequences we all will face if the condition of our court system worsens.

Justice is the essence of government, and a strong, reliable, and stable government is essential for a prosperous and harmonious democratic society. Without question, a strong judicial system ensures the overall well-being of our citizens, our communities, and our state.

Undoubtedly, everyone here is aware of recent events in Ukraine. In December, the Ukraine Supreme Court annulled the results of the country's disputed presidential election and ordered another election between the two main candidates. Political observers around the world were surprised the Court ordered a new run-off election, as

opposed to starting the entire process from scratch—a course of action advocated by Ukraine's pro-Moscow government. Although Ukraine has struggled to establish a high quality and independent judiciary, its courts are reputed for caving in to interference and pressure from the government. However, in this instance, the Supreme Court's action demonstrates the critical value of a strong and independent judiciary. The Court resolved a crisis that threatened to destabilize Ukraine—politically, socially, and economically.

Coincidentally, in the late 1990s, our court met with a group of Ukraine lawyers and judges, as well as groups from Bosnia, Russia, and Moldova. They traveled to Iowa to study our judicial system, which they regard as a model of judicial independence and integrity. Others share this high opinion of our court system. For example, the U.S. Chamber of Commerce ranks our judiciary in the top five among all fifty state judicial systems for creating a fair and reasonable litigation environment. Our judiciary ranks high on the quality, competence, and impartiality of its judges, and the timeliness of dispositions.

Iowans have always prided themselves on the integrity and quality of all of their government institutions. It would be wrong to lower our standards. We're often reminded these days that government can't do everything. I agree. Government cannot do everything. But there are a few things that only government can do, and that it must do well. One of those is administering justice.

#### Promise of Justice

With so much at stake, it's time we ask ourselves if Iowans are getting the justice system they demand, the justice system they expect, and the justice system they deserve. I suggest that they are not. Surely, the state can afford to do better.

If you are not inclined to provide the level of funding we recommend, then I must caution you—we cannot continue on this downward path. It is neither a constructive nor a long-term solution. Rather, it is a recipe for failure.

Finally, let's remember always that the courts do not belong to the temporary incumbents, but rather to the people who sent all of us here. I believe that should those people, our constituents, ever need their day in court, they would expect open doors, full service, timely hearings, and prompt resolution of their disputes. And when the courts do not meet these expectations, the people look to us for real solutions—not empty promises. If we keep this foremost in our minds, I am confident that we can ensure Iowans have meaningful access to a high-caliber court system, and we can make the promise of justice a reality.

Thank you.

Chief Justice Louis A. Lavorato was escorted from the House chamber by the committee previously appointed.

Governor Thomas J. Vilsack was escorted from the House chamber by the committee previously appointed.

**Representative Gipp moved that the joint convention be dissolved, which motion prevailed by a voice vote.**

**The Senate returned to the Senate chamber.**

**ADJOURNMENT**

**On motion of Senator Gronstal, the Senate adjourned at 10:39 a.m. until 8:30 a.m., Thursday, January 13, 2005.**

**APPENDIX****COMMUNICATIONS RECEIVED**

The following communications were received in the office of the Secretary of the Senate and placed on file in the Legislative Services Agency:

**STATE APPEAL BOARD**

General tort claims, highway tort claims, and settlements and judgments paid during 2004, pursuant to Iowa Code chapter 669. Report received on January 12, 2005.

Claims against the State of Iowa denied during May 2004 through January 2005. Report received on January 12, 2005.

**REPORTS OF COMMITTEE MEETINGS****ETHICS**

**Convened:** January 11, 2005, 4:05 p.m.

**Members Present:** Kibbie and Lamberti, Co-chairs; Connolly, Dearden, McKibben, and Mulder.

**Members Absent:** None.

**Committee Business:** Organizational meeting.

**Adjourned:** 4:15 p.m.

**AGRICULTURE**

**Convened:** January 12, 2005, 1:05 p.m.

**Members Present:** Fraise and Johnson, Co-chairs; Black, Brunkhorst, Courtney, Gaskill, Hahn, Hancock, Houser, Kibbie, Mulder, Putney, Ragan, and Rielly.

**Members Absent:** None.

**Committee Business:** Organizational meeting.

**Adjourned:** 1:30 p.m.

**APPROPRIATIONS**

**Convened:** January 12, 2005, 2:05 p.m.

**Members Present:** Angelo and Dvorsky, Co-chairs; Black, Boettger, Bolkcom, Connolly, Dotzler, Fraise, Gaskill, Horn, Johnson, Kettering, Miller, Putney, Ragan, Seng, Seymour, Shull, Stewart, Tinsman, Ward, and Warnstadt.

**Members Absent:** Hatch and Lamberti (both excused).

**Committee Business:** Organizational meeting.

**Adjourned:** 2:40 p.m.

**JUDICIARY**

**Convened:** January 12, 2005, 3:00 p.m.

**Members Present:** Kreiman and Miller, Co-chairs; Boettger, Brunkhorst, Dvorsky, Fraise, Hancock, Horn, McKibben, Quirnbach, Schoenjahn, Tinsman, Ward, Warnstadt, and Zaun.

**Members Absent:** Lamberti (excused).

**Committee Business:** Organizational meeting.

**Adjourned:** 3:25 p.m.

**RULES AND ADMINISTRATION**

**Convened:** January 12, 2005, 8:35 a.m.

**Members Present:** Gronstal and Iverson, Co-chairs; Angelo, Boettger, Courtney, Dvorsky, Hahn, Kibbie, Lamberti, and Ragan.

**Members Absent:** None.

**Committee Business:** Approved Senate rules, report of changes for employees, access and decorum policy, and access lists for Senate floor.

**Adjourned:** 8:45 a.m.

**INTRODUCTION OF RESOLUTION**

**[Senate Resolution 2](#)**, by committee on Rules and Administration, a resolution relating to permanent rules of the senate for the eighty-first general assembly.

Read first time under Rule 28 and **placed on calendar**.

## INTRODUCTION OF BILLS

**Senate File 23**, by Kibbie and Beall, a bill for an act authorizing the use of revenue derived from the physical plant and equipment levy and the local option sales tax for school infrastructure purposes for maintenance costs for specified school buildings, and for maintenance and repair costs for school district transportation equipment, and including an applicability provision.

Read first time under Rule 28 and referred to committee on **Education**.

**Senate File 24**, by Warnstadt and Wieck, a bill for an act relating to the exemption from city taxes of land included in a city's involuntary annexation petition and including effective and applicability date provisions.

Read first time under Rule 28 and referred to committee on **Local Government**.

**Senate File 25**, by Warnstadt and Wieck, a bill for an act authorizing the appointment of a nine-member city zoning board of adjustment.

Read first time under Rule 28 and referred to committee on **Local Government**.

**Senate File 26**, by Tinsman, a bill for an act requiring the state board of regents to conduct a study regarding the establishment of higher admissions standards for its institutions of higher learning.

Read first time under Rule 28 and referred to committee on **Education**.

**Senate File 27**, by Tinsman and Boettger, a bill for an act relating to the development of an Iowa studies professional development plan and the establishment of an Iowa studies committee at the university of northern Iowa, and directing the department of education to evaluate and report on the plan.

Read first time under Rule 28 and referred to committee on **Education**.

**Senate File 28**, by McKibben, Lamberti, Danielson, and Dotzler, a bill for an act exempting certain environmental test laboratory services from the state sales and use taxes.

Read first time under Rule 28 and referred to committee on **Ways and Means**.

#### SUBCOMMITTEE ASSIGNMENT

##### **Senate File 12**

APPROPRIATIONS: Angelo and Dvorsky, Co-chairs

#### FINAL COMMITTEE REPORT OF BILL ACTION

##### RULES AND ADMINISTRATION

**Bill Title:** **SENATE RESOLUTION 2**, a resolution relating to permanent rules of the senate for the eighty-first general assembly.

**Recommendation:** APPROVED COMMITTEE BILL.

**Final Vote:** Ayes, 10: Gronstal, Iverson, Angelo, Boettger, Courtney, Dvorsky, Hahn, Kibbie, Lamberti, and Ragan. Nays, none. Absent, none.

**Fiscal Note:** NOT REQUIRED UNDER JOINT RULE 17.

#### REPORT OF THE COMMITTEE ON RULES AND ADMINISTRATION

MR. PRESIDENT: Pursuant to **Senate Concurrent Resolution 2**, the committee on Rules and Administration submits the following increases, reclassifications, and the effective dates of Senate employees:

Sr. Journal Editor to Conf. Sec. to Secretary	K'Ann Brandt	Grade 30, Step 4 Grade 32, Step 3 Effective 10/8/04
Journal Editor I to Journal Editor II	Janet Hawkins	Grade 22, Step 5 Grade 25, Step 3 Effective 10/8/04
Journal Editor I	Megan Thompson	Step 1 to Step 2 Effective 10/8/04

Conf. Sec. to Ldr. to Admin. Asst. to Ldr.	Debbie Kattenhorn	Grade 27, Step 4 Grade 27, Step 4 Effective 12/17/04
Legis. Secretary to Conf. Sec. to Ldr.	Alyce Elmitt	Grade 18, Step 6+2 Grade 27, Step 2 Effective 1/3/05
Legis. Secretary to Conf. Sec. to Ldr.	Kay Kibbie	Grade 18, Step 5 Grade 27, Step 2 Effective 1/3/05
MICHAEL E. GRONSTAL, Co-chair	STEWART E. IVERSON, JR., Co-chair	