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**STATE OF IOWA**

**Senate Journal**

**WEDNESDAY, JANUARY 11, 2012**

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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 11, 2012

The Senate met in regular session at 9:04 a.m., President Kibbie presiding.

Prayer was offered by the Honorable Daryl Beall, member of the Senate from Webster County, Fort Dodge, Iowa.

## PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by President Kibbie.

The Journal of Tuesday, January 10, 2012, was approved.

The Senate stood at ease at 9:12 a.m. until the fall of the gavel for the purpose of party caucuses.

The Senate resumed session at 9:44 a.m., President Kibbie 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 102](#), 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 102](#), duly adopted, the joint convention was called to order at 9:50 a.m., President Kibbie 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 Kibbie declared a quorum present and the joint convention duly organized.

Senator Gronstal moved that a committee of six, three members from the Senate and three members from the House, be appointed to escort Governor Terry E. Branstad to the Condition of the Iowa Judiciary Message.

The motion prevailed by a voice vote and the Chair announced the appointment of Senators Rielly, Soddors, and Smith on the part of the Senate, and Representatives Anderson, Garrett, and Muhlbauer on the part of the House.

Senator Gronstal moved that a committee of six, three members from the Senate and three members from the House, be appointed to notify the Honorable Mark S. Cady, 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 Fraise, Hancock, and Whitver on the part of the Senate, and Representatives Tjepkes, Baltimore, and Wolfe on the part of the House.

The joint convention stood at ease at 9:52 a.m. until the fall of the gavel.

The joint convention resumed session at 9:56 a.m., President Kibbie presiding.

Secretary of State Matt Schultz, Secretary of Agriculture Bill Northey, Auditor of State David A. Vaudt, and Attorney General Tom Miller were escorted into the House chamber.

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

Becky Cady, wife of Chief Justice Cady; his son, Spencer Cady; and his son's fiancée, Reilly Branderhorst; were escorted into the House chamber.

Lieutenant Governor Kim Reynolds was escorted into the House chamber.

The committee waited upon Governor Terry E. Branstad and escorted him into the House chamber.

The committee waited upon Chief Justice Mark S. Cady and escorted him to the Speaker's station.

President Kibbie then presented Chief Justice Mark S. Cady who delivered the following Condition of the Judiciary Message:

Thank you for the opportunity to address this joint convention of the 84th General Assembly on the condition of the judiciary. We come together in this historic chamber not only for the opportunity to consider the state of the judiciary, but also, perhaps of equal importance, to simply use this moment to gather a better understanding of all we share in common. To reflect on what inspires each of us to serve in public office is what inspires all of us to serve Iowans and the State of Iowa. To reflect on the presence in this room of our shared sense of purpose, pursued with a shared sense of honor and respect and commitment to do our best, in whichever branch of government we do our work. To reflect on the simple truth that we all want what is best for Iowa and that we all serve the people of Iowa with the timeless hope of each generation—that our efforts today will lead to a better tomorrow.

But, today is not only a time to recall our aspirations, it is a time to identify how each branch of government can contribute to rebuilding the economy and creating a way of life in Iowa that will ensure our prosperity and our children's prosperity.

Let me begin with some important observations about what courts do to build a better tomorrow and what our Iowa courts have been doing to help assure this better tomorrow is Iowa's tomorrow. I will then discuss the obstacle we face in doing this important work and how we can overcome this obstacle together to reach a better tomorrow. I might add that the numbers, statistics, and details that supplement my remarks are included in the information packet we will disseminate to you today, and will also be available at the reception, which I invite everyone to attend, in the historic supreme court courtroom following the close of this joint convention.

A strong court system can play an important role, if not become the real catalyst, in achieving economic prosperity in Iowa. This proposition is not just my perception; it is supported by sound economic studies.

A few years ago, the World Bank conducted a study to determine what accounts for the success and wealth of a nation. This study found that the most important ingredient to the economic success and strength of a country, by far, was the presence of a court system that applied the rule of law fairly and impartially. Fair, efficient, and fully functioning courts provide businesses with the necessary confidence to invest in an area, or to expand a business operation, by assuring that their investment will be fully protected under the rule of law in the same way individual rights are maintained. As explained by the lead economist in the study, the confidence needed to promote

investment comes from “the efficiency of the legal system and how many days it takes to get to trial, how many days it takes to get a decision once you’re at trial, the lack of corruption, the degree of transparency—the whole set of issues that go into” what is called the rule of law. The business relationships and commerce needed to grow an economy must operate within an environment of the rule of law and must have confidence in the legal system to provide that environment.

This view is also supported by a 2010 study conducted by the United States Chamber of Commerce. This study surveyed 1500 senior litigators at America’s largest corporate employers. Two-thirds of these employers agreed that the litigation environment in a state impacts important business decisions in their company such as where to locate or do business. Businesses need and want a level playing field where the rules are fairly enforced and the gains achieved by their efforts are fairly protected by those rules.

Finally, the important role of the courts in fostering the economic development of a state was actually a concept recognized by our forefathers very early in our history. Records from our constitutional convention in 1857 reveal our first leaders spoke of the need for a well-maintained court system to properly guard both the lives of the waves of people who were entering this state at the time and the resources these people were investing into the state. Jonathan Hall of Burlington, who served in both this body and on the Iowa Supreme Court, reminded his colleagues to never, in his word, “forget” that the system of justice is what protects property in this state.

At the same time, we all understand a vibrant economy also depends on the many qualities of life we share in Iowa. While all Iowans contribute to our quality of life, the work of the courts has always played a special and direct role in providing a stable and safe environment for those who work and live in this state.

Every community in this state depends on our courts and our Judicial Branch employees to address and stop juvenile delinquency, to handle criminal charges, and to impose sentences on convicted criminal offenders. Each year, our judges and magistrates, with the help of our staff, dispose of thousands upon thousands of criminal cases and also issue thousands of protective orders and no-contact orders to help shield victims from further harm.

Additionally, the quality of life compatible with economic prosperity requires opportunities for our young people. Our children are the future, and the work of the courts is often the only dependable bridge to a future of opportunity for many of these children.

Every day, Iowa’s courts make important decisions affecting the lives of abused and neglected children. These children depend on our courts for timely placements in safe and stable homes.

Our courts also work to prevent and address juvenile delinquency. Last year, our juvenile court probation officers worked with nearly 22,000 troubled children and teens to confront their problems, change their behavior, and help them forge better lives for themselves. That is the equivalent of two full classrooms of children entering our system every day in our state. Most of these children need supervision, treatment, and services to address their underlying problems and needs. But, this work is not just essential to children; it has the potential of saving this state billions of dollars over time. Researchers at the National Center for Juvenile Justice calculate that the life-long taxpayer expenditure for every offender who enters prison is \$2 million. Another recent study concludes each juvenile who becomes a chronic offender costs taxpayers between 4.2 and 7.2 million dollars. When we are able to help young people when it really counts, the benefits are shared by all.

So, let me turn to the condition of Iowa’s judiciary and examine the judicial system we have in Iowa today.

My assessment begins with the most fundamental quality of justice—fair and impartial judges. I am pleased to report that fair and impartial justice continues to be the hallmark of Iowa’s court system. One measure of this quality is the annual survey conducted for the United States Chamber of Commerce, which has consistently ranked Iowa’s judges as among the most fair and impartial in the nation. Last year was no exception, and this ranking allows Iowa to be viewed as having one of the top court systems in the nation.

Similarly, I can report to you that the Iowa courts continue to be recognized nationally for transparency—one of the factors that helps develop confidence in courts and helps develop a prosperous economic climate. I can further report to you that we have fulfilled our promise made to you last year to become even more visible and open.

Because our courts belong to the people, it is important that our courtrooms are open to the public. In Iowa, our courtrooms are not only open to the public; we have gone to great lengths to take our courts to the people. In addition to our nationally recognized program of bringing cameras into the courtroom, we have online court dockets, streaming of Iowa Supreme Court oral arguments, and an award-winning judicial branch website filled with helpful, easy-to-find information about all aspects of the courts.

Consistent with past efforts to bring the courts to the people, the Iowa Supreme Court last year held oral arguments outside Des Moines. We held court in Cedar Rapids, Mason City, and Carroll. During each trip, each justice visited local schools and spoke to government classes in conjunction with an evening session of court. I cannot help but think that those communities gained a better appreciation for the role of the courts in our society. After the Mason City court session, the father of a young Mennonite boy at the center of one of the cases waited respectfully for an opportunity to visit with me. When he did, he simply extended his hand and said about the session, “I just wanted you to know that it seems like an honest thing.” We will continue to display this “honest thing” in other communities this year.

Innovations such as cameras in the courtroom and taking the courts to the people are examples of efficient, forward-thinking efforts we have undertaken to better serve all Iowans. Before I leave the subject of open and visible courts, let me add that I will again maintain office hours in the Capitol Building every Monday morning throughout the legislative session, just as last year. If at any time I am not available, another justice will be present to meet with you. Additionally, the door to my office across the street is always open to you.

We are also constantly searching for ways to improve our procedures and efficiency to meet the problems and demands of today’s complex world, to prepare ourselves for the challenges of the future, and to contribute effectively to Iowans’ prosperity and quality of life. This last year has been no exception.

For over a year now, an Iowa Supreme Court task force has been studying ways to make our court system as responsive as possible in the lives of Iowans and the operation of business and commerce. Justice Daryl Hecht and 83 committed Iowa business leaders, court users, judges, and attorneys, have been studying and evaluating new ideas for civil justice reform in Iowa in order to build a new court model to provide even more confidence in the business environment of Iowa.

Their report will be unveiled next month and could become the blueprint for a new civil justice system in Iowa comprised of special business courts, special litigation tracks for low-cost and prompt resolution of litigated matters and alternative dispute resolution methods now desired by many. These processes, as well as others, will help make our court system as relevant and attractive to users as possible and will provide an opportunity to make our court system even more attractive for economic development.

Last year we also saw great strides in the transition of our court system into a paperless operation. This too will brighten our economic future. As you know, this operation is the Electronic Document Management System, or EDMS. EDMS is designed to receive and store electronic court documents. Electronic filing and storage will allow more and more court users access to court records, 24 hours a day, seven days a week. Parties can view the court docket and court documents for their case from an office or home computer.

This system, when completed, will provide efficiencies never before seen in our or any other court system, as well as efficiencies that will benefit both public and private court users. We are building what will be a national template—a model for other states. Importantly, EDMS will allow us to more effectively allocate our workload and maintain the importance of a courthouse in each county.

EDMS now operates in four counties, and we are in the process of expanding into more counties and the appellate courts.

We have also sought to improve our judicial system by developing specialty criminal courts that target the underlying problems that bring people into our courts in an effort to craft better long-lasting solutions. Crime for too many Iowans is the result of drug addiction, and we now operate 28 drug courts in 19 counties in Iowa to better address addictions. The judges who staff these courts work closely with attorneys, substance-abuse treatment providers, and others to monitor progress through a variety of effective treatment methods. Last year, hundreds of Iowans likely avoided prison due to these drug courts and have been redirected toward a better future.

Family drug courts have also been implemented and have been found to be successful in reuniting families torn apart by child abuse and neglect on account of meth-addicted parents. In Wapello County, Judge Bill Owens sets aside two afternoons per month for family drug court. Ottumwa attorney, Mary Baird Krafka, made this observation about the outcomes she witnessed in the family drug court, "It is nothing short of exciting to observe, month by month, the improved appearance and demeanor of these parents."

These specialty courts have shown what the court system can do when it has the time and resources to do its best work.

We continue to make tremendous strides in our efforts to help abused and neglected children, as well as troubled youths.

As you know, we have taken numerous steps and implemented many reforms to strengthen court oversight of child welfare cases so we can expeditiously find permanent, loving homes for abused and neglected children, which ultimately improves their prospects for better lives and futures full of promise. These reforms have continued to produce the results we had hoped to see.

In addition, our juvenile court officers have found new approaches to addressing juvenile crime. They are now using evidence-based, risk and needs assessment tools that enable juvenile court officers to distinguish between low, moderate, and high risk youths and to better identify the underlying problems and needs of each youth.

So, overall, Iowa courts are fulfilling the mission they have been given. We live in a state that has gained a reputation for having a very good court system. Unfortunately, the Iowa Court system has been facing a mounting problem. We have identified this concern for you in the past, but let me explain what it means today.

The successes of this past year and those over the past decade have primarily been the result of two factors. The first factor is that we have made many innovative improvements and found many efficiencies to do our work. Yet, by far, our success has been the result of the dedication and extraordinary work of our people. We are 1753 people who believe in the courts and the work of the courts.

Yet, while we have faced budget cuts year after year, resulting in a workforce smaller than we had 24 years ago, our workload has increased dramatically. During this 24-year period, the number of cases filed with our courts, excluding simple misdemeanors and traffic violations, has increased 50%. During this same time, the Code of Iowa has increased in size by 79%. A recent report of the Legislative Service Agency of this state revealed that we have cut our full-time workforce 16.5% since 2003, while the workforce in state government as a whole has grown 1.6%.

I make this observation not to complain, but primarily to show that our successes are truly the result of the very devoted people who work in the court system. Yet, I am beginning to see that these successes cannot be sustained because, quite simply, I am not sure our people can continue to carry all the weight they have been asked to shoulder. Please understand; we appreciate very much the budget constraints you have faced, and we are grateful for the past support that you have given to us. In turn, we have striven to operate our courts very efficiently, and we have spent our funds wisely to produce very good results. All of us in the Judicial Branch have put our system of justice first, and this has made it better. But, the months and months of cuts have turned to years and years of cuts, and those years have now stretched into a decade. The spirit that has inspired us to do so well is challenged, and too often, we are forced to operate in ways that we do not want to operate because we know to do so is not good for Iowans. Not only does this cause problems for Iowans, it undermines the public's confidence in the reliability of our justice system and hinders the state in achieving its goal of a vibrant economy.

Right now, 33 of Iowa's 100 clerks' offices operate part-time because they do not have enough employees to operate fulltime. These closures hinder Iowans seeking to initiate emergency mental health or substance abuse commitments or seeking civil protective orders for domestic abuse. They have also slowed down the processing of all cases, as well as liens, garnishments, warrants, and child support checks. Closures have caused the public to lose confidence in the courts.

Cuts in other staff components such as court reporters, case schedulers, court attendants, law clerks, and others have exacerbated case processing delays—frustrating us and causing problems for many Iowans. Litigants must wait longer before they have their day in court. Even when a trial date arrives there is no guarantee it will proceed as scheduled. We are experiencing too many instances when people seeking domestic abuse protective orders, high priority cases, must wait hours on end for a court reporter to become available to record the proceeding. Too many times, inadequate staffing levels have forced rescheduling of custody disputes and parents and children have been forced to wait. Complex civil trials have also been canceled at the last minute because judges or other personnel were not available to staff the courtroom. Even after trials and hearings occur, litigants must often wait longer for rulings because judges lack appropriate support staff.

The resulting stress and strain experienced by our people over the past decade of budget cuts has been observed not only by me, it has been observed by each member of the supreme court as they have traveled to many of the courthouses across Iowa in the last year to visit with court staff. It has been observed by others as well. While not voiced by our people as a complaint, the stress and strain is written on their faces. They worry about not being able to provide the help they know Iowans need. Today, for example, most of our juvenile court officers no longer have the time to provide face-to-face interviews with all first-time juvenile offenders, so many do not get the help they need and end up returning to the court system. We know we are not really helping our troubled teens when we are no longer able to consistently meet them face to face.



I truly understand funding is tight for everyone, but there is little more we can do to help sustain this court system without your help. Ultimately, by constitutional design, Iowans depend on you to provide the resources to support the justice system, and today I respectfully ask you to extend your hand to help.

Today, the Iowa Judicial Branch operates on a budget of \$154,000,000, about 2½% of the total state budget. At the same time, we bring in about \$146,000,000 each year through fines, fees, and the like. So, in truth, everything we provide to this state, including the opportunity for a more prosperous future based on the rule of law secured by fair and impartial courts, costs less than one-half of one percent of our total state budget. We need just a small fraction more to adequately fund and staff the branch, but a fraction that will make a world of difference.

I must also tell you our budget is particularly fragile for another reason. Unlike in the past, status quo funding will not even allow us to limp along for another year. Without additional money, the Judicial Branch has no means to absorb the additional costs of salary adjustments and will face another severe reduction of workforce and more cuts in the hours our clerks' offices will be open. Fewer staff and more closed courthouses will cause greater delays and less access to justice. In my view, these unwanted consequences would pierce the spirit of our devoted court employees and mark the start of a decline in our great court system. Not only will confidence in a reliable and efficient court system be lost, but an essential building block for economic growth will be jeopardized.

But, in the end, I simply ask you to believe in our courts. While it has been important for me to inform you about the struggles of our people, just as it is important for them to know I support them and I am deeply moved by all they do for this state, I simply ask you to believe, as we believe, in the work of the courts. Believe, as we believe, that with just a little more help our courts can truly help move this state into the future it so richly deserves.

Investing in the courts now will give all the people in our court system the tools they need to do the job they have devoted their lives to do and will allow us to structure our court system to provide services it was established to deliver.

Investing in the courts now will deliver the foundation for a vibrant economy through a transparent and responsive civil justice system that continues to be a model for the nation.

Investing in the courts now will enhance our court system to give our children and others in need the best opportunity for a productive life.

Investing in the courts now will allow us to do our best work to give Iowa its best future. Investing in the courts will allow us to show the nation how the three branches of government can work for the benefit of the people.

And, investing in the courts now, just a fraction more, will show future generations what believing in our courts now will do.

So, the State of the Judiciary today is not just in the hands of the courts, it is in your hands too. This is the time for us to work together as never before. This is the time to begin rebuilding Iowa's economy and creating a way of life that will ensure our prosperity and our children's prosperity. This is our time to truly discover what our joint efforts can grow and produce for the bountiful future of this great state.

Thank you.

Chief Justice Mark S. Cady was escorted from the House chamber by the committee previously appointed.

Governor Terry E. Branstad was escorted from the House chamber by the committee previously appointed.

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

#### ADJOURNMENT

On motion of Senator Gronstal, the Senate adjourned at 10:40 a.m. until 9:00 a.m., Thursday, January 12, 2012.

### APPENDIX

#### REPORTS OF COMMITTEE MEETINGS

##### AGRICULTURE

**Convened:** Wednesday, January 11, 2012, 3:15 p.m.

**Members Present:** Seng, Chair; Johnson, Ranking Member; Bowman, Courtney, Greiner, Hahn, Hancock, Kapucian, Kibbie, and Rielly.

**Members Absent:** Fraise, Vice Chair; Black, and Houser (all excused).

**Committee Business:** Organizational meeting.

**Adjourned:** 3:35 p.m.

##### VETERANS AFFAIRS

**Convened:** Wednesday, January 11, 2012, 2:35 p.m.

**Members Present:** Beall, Chair; Danielson, Vice Chair; Seymour, Ranking Member; Bacon, Ernst, Greiner, Horn, Kibbie, Ragan, and Soddors.

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

**Committee Business:** Introduction and organization.

**Adjourned:** 3:10 p.m.

#### INTRODUCTION OF BILLS

**Senate File 2017**, by Dvorsky, a bill for an act allowing the use of a leashed dog to retrieve a wounded deer and providing a penalty.

Read first time under Rule 28 and referred to committee on **Natural Resources and Environment**.

**Senate File 2018**, by committee on Appropriations, a bill for an act relating to financial assistance for purposes of the battleship Iowa, BB-61, making appropriations, and including effective date provisions.

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

#### STUDY BILLS RECEIVED

##### **SSB 3009      Education**

Relating to programs and activities under the purview of the department of education, the state board of education, the board of educational examiners, school districts, and accredited nonpublic schools; and providing for the retention of certain fees and for the use of certain funds.

##### **SSB 3010      Veterans Affairs**

Relating to the duties and requirements of the department of veterans affairs and the commission of veterans affairs.

#### SUBCOMMITTEE ASSIGNMENTS

**Senate File 3**  
(Reassigned)

TRANSPORTATION: Danielson, Chair; Hahn and Hancock

**Senate File 19**  
(Reassigned)

ECONOMIC GROWTH/REBUILD IOWA: Soddors, Chair; Bacon and Dotzler

**Senate File 71**  
(Reassigned)

ECONOMIC GROWTH/REBUILD IOWA: Soddors, Chair; Danielson and Ward

**Senate File 76**  
(Reassigned)

TRANSPORTATION: Danielson, Chair; Hahn and Hancock

**Senate File 145**  
(Reassigned)

ECONOMIC GROWTH/REBUILD IOWA: Hatch, Chair; Chelgren and Sodders

**Senate File 186**  
(Reassigned)

ECONOMIC GROWTH/REBUILD IOWA: Sodders, Chair; Hatch and Whitver

**Senate File 189**  
(Reassigned)

LOCAL GOVERNMENT: Wilhelm, Chair; Bartz and Courtney

**Senate File 196**  
(Reassigned)

LOCAL GOVERNMENT: Wilhelm, Chair; Bartz and Courtney

**SSB 1062**  
(Reassigned)

LOCAL GOVERNMENT: Wilhelm, Chair; Courtney and Hamerlinck

**SSB 1170**

ECONOMIC GROWTH/REBUILD IOWA: Sodders, Chair; Bacon and Dotzler

**SSB 3009**

EDUCATION: Quirnbach, Chair; Schoenjahn and Hamerlinck

**SSB 3010**

VETERANS AFFAIRS: Kibbie, Chair; Danielson and Seymour

## FINAL COMMITTEE REPORT OF BILL ACTION

### APPROPRIATIONS

**Bill Title:** \*SENATE FILE 2018 (SSB 3008), a bill for an act relating to financial assistance for purposes of the battleship Iowa, BB-61, making appropriations, and including effective date provisions.

**Recommendation:** APPROVED COMMITTEE BILL.

**Final Vote:** Ayes, 18: Dvorsky, Dix, Bartz, Black, Boettger, Bolkcom, Danielson, Fraise, Hancock, Hatch, Hogg, Jochum, Johnson, Kapucian, Kettering, Ragan, Schoenjahn, and Seymour. Nays, none. Absent, 3: McCoy, Dotzler, and Houser.

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

\*Pursuant to Rule 40, the Legislative Services Agency reported nonsubstantive changes to the members of the Appropriations Committee on [Senate File 2018](#), and they were attached to the committee report.