

*State of Iowa*

**JOURNAL  
OF THE SENATE**

**SEVENTY-NINTH  
GENERAL ASSEMBLY**

**2002 FIRST  
EXTRAORDINARY SESSION**

**April 22, 2002**

**MARY E. KRAMER, President of the Senate  
MICHAEL E. MARSHALL, Secretary of the Senate**



# JOURNAL OF THE SENATE

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FIRST CALENDAR DAY  
FIRST SESSION DAY  
FIRST EXTRAORDINARY SESSION

Senate Chamber  
Des Moines, Iowa, Monday, April 22, 2002

Pursuant to the proclamation of the Governor, the Honorable Thomas J. Vilsack, convening the Seventy-ninth General Assembly in Extraordinary Session, the Senate was called to order at 9:12 a.m. by the Honorable Mary E. Kramer, President of the Senate.

Prayer was offered by the Honorable Patrick J. Deluhery, member of the Senate from Scott County, Davenport, Iowa.

## PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Senate Pages Angie Groh and Micah Van Mersbergen.

## COMMUNICATION FROM THE GOVERNOR

The following communication from the Governor was presented:

April 18, 2002

The Honorable Mary Kramer  
President of the Senate  
State Capitol  
LOCAL

The Honorable Brent Siegrist  
Speaker of the House  
State Capitol  
LOCAL

I hereby submit the Proclamation setting the Extraordinary Session of the Iowa Legislature to convene at 9:00 a.m., April 22, 2002.

Sincerely,  
THOMAS J. VILSACK  
Governor

**STATE OF IOWA**  
***Executive Department***

In The Name And By The Authority Of The State Of Iowa

**P R O C L A M A T I O N**

**Whereas**, the 2002 Regular Session of the Seventy-ninth General Assembly adjourned pursuant to House Concurrent Resolution 124, and

**Whereas**, throughout the legislative session that adjourned last week, I repeatedly called on lawmakers to pass a budget that adequately funded vital state services, and

**Whereas**, the budget lawmakers passed underfunds vital educational, child safety, health care, and public security services, and

**Whereas**, Iowa has ample resources to adequately fund vital state services while maintaining a balanced budget, and

**Whereas**, Iowa cannot afford to underfund these vital state services, since such a step could jeopardize the security and welfare of Iowa families.

**Now Therefore**, I, Thomas J. Vilsack, Governor of the State of Iowa, in accordance with Article IV, Section XI, of the Constitution of the State of Iowa, do hereby proclaim that the Seventy-ninth General Assembly shall convene in extraordinary session in Des Moines, Iowa, at 9:00 a.m. on the 22nd day of April, 2002, and to that end I do call up and direct the members of the House of Representatives to convene in the House chamber at the State Capitol and members of the Senate to convene in the Senate chamber at the State Capitol at 9:00 a.m. on the 22nd day of April, 2002, for the purpose which the assembly is convened, namely the matter of approving a fiscal year 2003 state budget that protects Iowans' priorities and matters properly related thereto.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 18th day of April in the year of our Lord two thousand two.

(SEAL)

THOMAS J. VILSACK, Governor

Attest:

CHESTER J. CULVER  
Secretary of State

## ORGANIZATION OF THE SENATE

Senator Iverson moved that the selection of seats, determination of mileage of senators, assignment of press seats, and all other organizational or administrative matters not specifically provided for in Joint Rule 3 be the same for this Extraordinary Session as for the 2002 Regular Session of the Seventy-ninth General Assembly.

The motion prevailed by a voice vote.

### SECRETARY TO NOTIFY THE GOVERNOR AND THE HOUSE

Senator Iverson moved that the Secretary of the Senate be directed to send a written message to the Governor and the House of Representatives informing them that the Senate was organized and ready to transact business and receive any messages that they may transmit.

The motion prevailed by a voice vote.

### HOUSE MESSAGE RECEIVED

The following message was received from the Chief Clerk of the House:

MADAM PRESIDENT: I am directed to inform your honorable body that the House has, pursuant to the April 18, 2002, proclamation of the Governor, **duly organized** for the 2002 Extraordinary Session of the Seventy-ninth General Assembly and is ready to receive communications from the Senate.

The Senate stood at ease at 9:20 a.m. until the fall of the gavel for the purpose of party caucuses.

The Senate resumed session at 12:10 p.m., President Kramer presiding.

### RECESS

On motion of Senator Iverson, the Senate recessed at 12:11 p.m. until the completion of a meeting of the committee on Rules and Administration.

## APPENDIX

### REPORT OF COMMITTEE MEETING

#### RULES AND ADMINISTRATION

**Convened:** Monday, 12:11 p.m.

**Members Present:** Iverson, Chair; Kramer, Vice Chair; Gronstal, Ranking Member; Boettger, Dvorsky, Fink, Harper, Lord, McKean, and Rittmer.

**Members Absent:** Gaskill.

**Committee Business:** Passed resolution for adjournment.

**Adjourned:** 12:18 p.m.

### COMMITTEE REPORT

#### RULES AND ADMINISTRATION

**Final Bill Action:** SENATE CONCURRENT RESOLUTION 120, a concurrent resolution to provide for adjournment sine die.

**Recommendation:** APPROVED COMMITTEE BILL.

**Final Vote:** Ayes, 6: Iverson, Kramer, Boettger, Lord, McKean, and Rittmer. Nays, 4: Gronstal, Dvorsky, Fink, and Harper. Absent or not voting, 1: Gaskill.

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

### RECONVENED

The Senate reconvened at 12:19 p.m., President Kramer presiding.

### INTRODUCTION OF RESOLUTION

**Senate Concurrent Resolution 120**, by committee on Rules and Administration, a concurrent resolution to provide for adjournment sine die.

Read first time and **placed on calendar**.

CONSIDERATION OF RESOLUTION  
(Regular Calendar)

Senator Iverson asked and received unanimous consent to take up for consideration Senate Concurrent Resolution 120.

**Senate Concurrent Resolution 120**

On motion of Senator Iverson, **Senate Concurrent Resolution 120**, a concurrent resolution to provide for adjournment sine die, was taken up for consideration.

Senator Boettger took the chair at 1:42 p.m.

President Kramer took the chair at 1:49 p.m.

(Action on Senate Concurrent Resolution 120 was deferred.)

HOUSE MESSAGES RECEIVED AND CONSIDERED

The following messages were received from the Chief Clerk of the House:

MADAM PRESIDENT: I am directed to inform your honorable body that the House has on April 22, 2002, **adopted** the following resolution in which the concurrence of the Senate is asked:

**House Concurrent Resolution 125**, a concurrent resolution to provide for adjournment sine die.

Read first time and **attached to companion Senate Concurrent Resolution 120**.

ALSO: That the House is **prepared to adjourn** the 2002 Extraordinary Session of the Seventy-ninth General Assembly pursuant to House Concurrent Resolution 125, duly adopted.

LEAVES OF ABSENCE

Leaves of absence were granted as follows:

Senator Dearden, for the day, and Senators Hansen and McCoy, until they return, on request of Senator Soukup.

## BUSINESS PENDING

**Senate Concurrent Resolution 120**

The Senate resumed consideration of Senate Concurrent Resolution 120.

Senator Iverson asked and received unanimous consent that **House Concurrent Resolution 125** be **substituted** for **Senate Concurrent Resolution 120**.

**House Concurrent Resolution 125**

**House Concurrent Resolution 125**, a concurrent resolution to provide for adjournment sine die, was taken up for consideration.

Senator Iverson moved the adoption of House Concurrent Resolution 125.

A record roll call was requested.

On the question "Shall the resolution be adopted?" (H.C.R. 125) the vote was:

Ayes, 29:

Angelo	Behn	Boettger	Drake
Freeman	Gaskill	Greiner	Houser
Iverson	Jensen	King	Kramer
Lamberti	Lord	Lundby	Maddox
McKean	McKibben	McKinley	Miller
Redfern	Redwine	Rehberg	Rittmer
Schuerer	Sexton	Tinsman	Veenstra
Zieman			

Nays, 18:

Black	Bolkcom	Connolly	Deluhery
Dvorsky	Fiegen	Fink	Flynn
Fraise	Gronstal	Hammond	Harper
Holveck	Horn	Kibbie	Ragan
Shearer	Soukup		

Absent or not voting, 3:

Dearden	Hansen	McCoy
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The motion prevailed and the resolution was adopted.

## WITHDRAWN

Senator Iverson asked and received unanimous consent that **Senate Concurrent Resolution 120** be **withdrawn** from further consideration of the Senate.

## IMMEDIATELY MESSAGED

Senator Iverson asked and received unanimous consent that **House Concurrent Resolution 125** be **immediately messaged** to the House.

SECRETARY TO NOTIFY THE  
GOVERNOR AND THE HOUSE

Senator Iverson moved that the Secretary of the Senate be directed to send a written message to the Governor and the House of Representatives informing them that the Senate was prepared to adjourn sine die pursuant to House Concurrent Resolution 125.

The motion prevailed by a voice vote.

## FINAL ADJOURNMENT

By virtue of House Concurrent Resolution 125, duly adopted, the day of April 22, 2002, having arrived, President Kramer declared the 2002 Extraordinary Session of the Seventy-ninth General Assembly adjourned sine die at 2:22 p.m.



**SENATE BILLS APPROVED,  
ITEM VETOED, AND VETOED  
SUBSEQUENT TO ADJOURNMENT**

**Seventy-Ninth General Assembly**

**2002 Regular Session**



SENATE BILLS APPROVED, ITEM VETOED,  
AND VETOED SUBSEQUENT TO ADJOURNMENT

The following is a record of action by the Governor transmitted to the Secretary of State after the close of the 2002 Regular Session:

SENATE BILLS APPROVED

S.F. 348 – Relating to the establishment of Iowa charter schools and providing for a conditional effective date. Approved April 23.

S.F. 503 – Relating to open feedlots, by providing for standards of construction for pollution control structures. Approved April 30.

S.F. 2034 – Relating to the filing of a criminal indictment or trial information against a person who is not present in the state. Approved April 22.

S.F. 2057 – Relating to the designation of a Dr. Norman E. Borlaug World Food Prize Day. Approved May 10.

S.F. 2118 – Prohibiting human cloning, and providing penalties. Approved April 26.

S.F. 2124 – Relating to the department of public defense by amending the state military code and the Iowa code of military justice, creating a statewide mutual aid compact, providing for the confidentiality of certain records, exempting the department of public defense from certain state service contract requirements and state competitive bidding requirements, exempting the Iowa technology center from anticompetition provisions, increasing a standing appropriation, providing criminal penalties for violations, and providing effective dates. Approved April 22.

S.F. 2168 – Authorizing the state board of regents to issue bonds to construct, improve, remodel, repair, furnish, and equip inpatient and outpatient facilities and patient care facilities at the university of Iowa hospitals and clinics. Approved May 8.

S.F. 2197 – Prohibiting a registered sex offender from residing near a school or child care facility, and providing a penalty. Approved May 9.

S.F. 2205 – Relating to regulation of child care and child development homes and child care centers and providing effective date and applicability provisions. Approved May 2.

S.F. 2228 – Relating to utilization of school district moneys for physical plant and equipment levy purposes. Approved April 22.

S.F. 2258 – Relating to the board of educational examiners' authority to determine whether an applicant for licensure or certification or for renewal of a license is qualified for the license sought. Approved April 26.

S.F. 2259 – Amending Code provisions administered by the department of education, including provisions related to participation in extracurricular activities, tuition reimbursement payment by school districts under the postsecondary enrollment options Act, interscholastic activities agreements, school infrastructure program calculations, phase I payment calculations, and the use of phase III balances by school districts and area education agencies. Approved April 26.

S.F. 2268 – Relating to animals other than livestock, including the taking of such animals, providing for their disposition, and providing for the reimbursement of dispositional expenses, providing for the protection of animals from injury or torment, and providing penalties. Approved April 26.

S.F. 2275 – Relating to statutory corrections which may adjust language to reflect current practices, insert earlier omissions, delete redundancies and inaccuracies, delete temporary language, resolve inconsistencies and conflicts, update ongoing provisions, or remove ambiguities and including effective and retroactive applicability date provisions. Approved April 22.

S.F. 2280 – Relating to the requirements of the department of human services for certain child welfare services providers and providing an effective date. Approved April 23.

S.F. 2286 – Relating to the civil commitment of sexually violent predators, and providing an effective date. Approved April 30.

S.F. 2293 – Relating to animal agriculture, providing for fees, providing for penalties, and including retroactive applicability and effective date provisions. Approved April 29.

S.F. 2305 – Relating to the administration of the tax and related laws by the department of revenue and finance, including administration of state individual income, corporate income, sales and use, property, motor fuel, and special fuel. Approved May 6.

S.F. 2316 – Relating to the sale of certain farmland by Iowa state university of science and technology, providing for the appropriation and use of proceeds from the sale, and providing an effective date. Approved May 2.

S.F. 2318 – Relating to the tax on premiums and subscriber contract payments received by insurance companies and health service corporations by phasing in a reduction in the tax and increasing the prepayment of the tax. Approved May 9.

S.F. 2320 – Relating to the assessment of court fees by the clerk of district court. Approved April 23.

S.F. 2321 – Relating to sales and use taxes by requiring the department of revenue and finance to collect data on the extent and the effect on taxes of electronic commerce in the state, striking the repeal of the tax treatment of sales where the substance of the transaction is delivered by electronic waves, digitally, or by way of cable or fiber optics, and establishing a committee to enter into multistate discussions on the simplification of the sales and use taxes and including an effective date. Approved May 10.

S.F. 2323 – Relating to the creation of a registered nurse recruitment program and fund to be administered by the college student aid commission. Approved April 26.

S.F. 2325 – Relating to certain state agency regulatory functions by reorganizing the duties of the department of inspections and appeals, transferring the court appointed special advocate program to the department of inspections and appeals, renaming and revising the duties of the state citizen foster care review board, reorganizing the administrative structure of the department of natural resources, providing for legislative review of state agencies, and revising requirements for licensed birth centers. Approved May 10.

S.F. 2328 – Providing for the establishment of the state percent of growth for purposes of the state school foundation program and providing an applicability date. Approved May 9.

### GOVERNOR'S ITEM VETO MESSAGES

May 10, 2002

The Honorable Chester Culver  
Secretary of State  
State Capitol  
LOCAL

Dear Secretary Culver:

I hereby transmit Senate File 2317, an act relating to the tobacco master settlement agreement, including tobacco product manufacturer compliance, making an appropriation, and providing penalties. This legislation provides additional remedies to aid in the enforcement of the Model Statute, Code 453C which was required to be approved and enforced by the State in the Master Settlement Agreement with the Tobacco Manufacturers.

Sections 1–8 of this bill would require compliance with chapter 453C before a distributor could affix stamps to the product. Additionally, a registered agent would be required for service of process of those out of state manufacturers selling in this state. Iowa is required to "diligently enforce" chapter 453C and penalties for failure to are monetary and substantial. The possibility exists that the entire amount owed to Iowa for any particular year could be eliminated if the statute is not diligently enforced.

Section 9 is the balance owed the private counsel retained to represent Iowa in its litigation against the Tobacco manufacturers. The original appropriation contained in House File 755, section 25, of last year's appropriation was \$944,877.60 short of the obligation owed to the attorneys by contract. The shortage was created when estimates paid by Tobacco manufacturers over the last three years did not meet actual obligation. When the contractual obligation to the attorneys is concluded, the balance of the payments will be assigned to the State.

In its present form there is some question as to whether Sections 1–8 would jeopardize Iowa having a qualified model statute within the meaning of the Master Settlement Agreement. That in itself would result in substantial monetary penalties for the State.

Senate File 2317 is, therefore, signed on this date with the following exceptions, which I hereby disapprove.

I am unable to approve Sections 1–8 given the potential to put Iowa in noncompliance with the Master Settlement Agreement. I look forward to working with lawmakers to approve legislation that would ensure compliance with the Master Settlement Agreement and not jeopardize these funds.

For the above reasons, I respectfully disapprove these items in accordance with Amendment IV of the Amendments of 1968 to the Constitution of the State of Iowa. All other items in Senate File 2317 are hereby approved as of this date.

Sincerely,  
THOMAS J. VILSACK  
Governor

May 10, 2002

The Honorable Chester Culver  
Secretary of State  
State Capitol  
LOCAL

Dear Secretary Culver:

I hereby transmit Senate File 2326, an Act making, reducing, and transferring appropriations, and providing for other properly related matters and including effective dates.

Since the Legislature approved this bill, there has been a dramatic change in the State's revenue projections. Most states and the federal government experienced a large reduction in final pay income tax returns and a correspondingly large increase in taxpayers due refunds. Because of this change in circumstance, I asked the State's Revenue Estimating Conference (REC) to meet to review their official revenue estimate for both fiscal years 2002 and 2003.

On May 7, the REC met and decreased general fund resources available to the State by \$205.5 million in fiscal year 2002 and \$220.1 million in fiscal year 2003. By law, both the governor and the legislature must rely on the REC estimate in preparing and approving the state budget.

While I am concerned about many details within this bill, there is a larger, more fundamental concern that prevents me from approving the majority of this bill. Due to recent action by the REC in lowering revenue projections, signing this bill would enact a general fund budget for fiscal year 2003 that results in a general fund deficit of more than \$200 million and would be an irresponsible action. I cannot and will not do so.

At the same time, we cannot go back on our commitment to our children and families. Education at all levels is the number one priority in Iowa. To build on progress in student achievement, reduced class sizes, and job and wealth creation, we must have an educated workforce, and we must use our colleges and universities as an engine for economic growth. Even as we work to cut budgets, we must do all we can to preserve our commitment to education and maintain the educational opportunities for our children.

To help ensure this educational commitment, I am approving Division IV, Sections 76 through 86, the education portion of Senate File 2326 with the noted exceptions. While it falls short of my original goals for funding, given our current fiscal realities, it is likely the best investment we can make at this time. We will continue to work for additional resources in education through achieving savings and efficiencies in government. In the end, however, we must look to our educated workforce and our colleges and universities to be a catalyst for economic growth in our state. In the long run, education is the key to Iowa's economic prosperity.

In order for our children to have the best opportunities available to them, they must also have adequate access to health care. Iowa has the distinction of being the top performing state in the nation according to The Social Health of the States, conducted by the Fordham Institute for Innovation in Social Policy. In an effort to continue the progress we have made in ensuring every child receives the medical attention they need I am approving Sections 106, which provides funding for the Healthy and Well Kids in Iowa (*hawk-i*) program. In a nation as wealthy as ours, no child should be left out.

Senate File 2326 is, therefore, signed on this date with the following exceptions, which I hereby disapprove.

I am unable to approve Division I, Sections 1 through 33; Division II, Sections 34 through 45; Division III, Sections 46 through 75; Division V, Sections 87 through 98; Division VI, Sections 99 through 105 and Sections 107 through 140; Division VII, Sections 141 through 162; Division VIII, Sections 163 through 167. This action is necessary as a result of the REC's lowering the revenue estimates. I intend to work with lawmakers in a special session this month to take responsible action to reduce spending, reallocate existing resources, and balance this budget.

I am unable to approve Section 79, subsection 15, paragraph 2. This paragraph states that it is the intent of the general assembly to cease providing assistance for the Jobs for America's Graduates (JAG) program on June 30, 2003. This is a valuable program that provides direct services to the most at-risk juniors and seniors in local school districts through direct intervention. These students are worked with intensively to ensure that they graduate and are successful in obtaining a job or enrolling in postsecondary training. It is our duty to provide the tools to enable all students to succeed.

I am unable to approve Section 79, subsection 16, paragraph 2. This paragraph states that it is the intent of the general assembly to cease providing assistance for the Americorps After-School Initiative on June 30, 2003. Americorps is an after school program aimed at middle school students located in schools with high rates of juvenile crime, violence and drug abuse. This is an important tool in linking people across Iowa willing to volunteer to improve a child's life.

For the above reasons, I respectfully disapprove these items in accordance with Amendment IV of the Amendments of 1968 to the Constitution of the State of Iowa. All other items in Senate File 2326 are hereby approved as of this date.

Sincerely,  
THOMAS J. VILSACK  
Governor

### GOVERNOR'S VETO MESSAGE

May 9, 2002

The Honorable Chester Culver  
Secretary of State  
State Capitol Building  
L O C A L

Dear Mr. Secretary:

I hereby transmit Senate File 2190, an Act concerning workers' compensation, which among other things, would reduce workers' compensation payments made to injured employees by expanding the ability of employers to apportion compensation payments made to employees who suffer more than one work-related injury, or a single injury that follows a preexisting functional condition.

The workers' compensation statute has historically struck a carefully crafted balance between the interests of employers and employees in the state of Iowa. Legislators originally enacted the statute to create a consistent and fair compensation schedule for workers who suffered injuries during the course of their employment. Like the acts of most other states, the Iowa workers' compensation statute guaranteed prompt, yet limited, compensation for employee work-related injuries. Legislators also crafted the original statute to promote industrial and workplace safety, and reduce the likelihood that injured workers and their dependants would be forced to seek public assistance. In exchange for this well-defined and structured system, employees gave up all rights to seek full and fair compensation for their work-related injuries in a court of law. Thus, the Iowa workers' compensation statute became the exclusive remedy for all work-related injuries, regardless of the circumstance.

Senate File 2190 destroys the effective balance between the interests of employers and the well-being of injured workers by expanding an employer's ability to apportion workers' compensation payments due and owing when the employer received a prior payment for a prior injury. In essence, Senate File 2190 would allow an employer to receive a 'credit' for any pre-existing condition that affected the employability of a worker, whenever a subsequent workplace injury increased the industrial disability of the worker, regardless of the nature of the subsequent injury, or its relationship to the prior one. Senate File 2190 would also allow an employer to apportion a work-related injury, even where a prior injury or disease would not cause an ascertainable portion of the work-related injury, and wouldn't independently produce some degree of disability before the subsequent injury. This change would be clearly divergent from the common law of tortious liability, and it would contravene the initial intent of the worker's compensation statute.

Under Senate File 2190, a worker who has suffered a partial disability of 35 percent for a damaged shoulder tendon, can only recover a workers' compensation payment of 15 percent, for a subsequent and unrelated back injury, sustained on the job, which results in an additional 50 percent loss to the worker's earning capacity. As such, this worker, whose working capacity has fallen from 100% to 15%, would see his or her compensation payment reduced under Senate File 2190 from 85% to 50%. This result would be unjust and untenable. Not only would it lead to an unconscionable windfall for employers, at the expense of working Iowans, but it would also jeopardize the safety of workers by removing a powerful incentive for Iowa companies to maintain safe working environments.

Workers' compensation is widely regarded as an important tool to ensure that employers update working environments and minimize any hazardous working conditions that may jeopardize the health and safety of their workforce. Workers' compensation also constitutes the first line of defense against economic catastrophe, whenever a wage earner sustains a substantial work-related injury. Senate File 2190 would impose undue hardships on injured workers and their dependants by shifting the fiscal responsibility for support following a work-related injury from the employer to the injured employee. Senate File 2190 may also have the unintended consequence of increasing the tax burden placed on Iowa taxpayers, who fund public assistance programs that support injured and/or displaced workers with reduced earning capacities.

The state of Iowa must protect its workers. Protection cannot be provided without ensuring that workers who suffer a substantial work-related injury have access to a balanced and consistent compensation schedule. Senate File 2190 would create a plainly inequitable compensation schedule by expanding apportionment limitations in a manner that would substantially reduce compensation payments made to employees who suffer more than one work-related injury, or a single injury that follows a preexisting functional condition. This bill would shift an unjust portion of the burden of diminished employability away from employers, and place it squarely on the shoulders of injured workers.

For this reason, I hereby respectfully disapprove Senate File 2190.

Sincerely,  
THOMAS J. VILSACK  
Governor

