



# Representative Andrew Wenthe Statehouse News

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## Capitol Comments

An issue that is often on the mind of anyone who travels throughout northeast Iowa is the state's deer population. We all know someone who has experienced an unfortunate meeting with a deer on one of northeast Iowa's roadways. Often these encounters result in nothing more than a small loss of tire tread and an increased heart rate. Unfortunately though, sometimes nothing can be done to avoid a collision and significant damage to a vehicle or even personal injury can occur.

The legislature took action in the last legislative session to reduce the deer herd in Iowa and make Iowa's roadways safer. As a member of the Natural Resources Committee, I recently received an update on the progress made by the Department of Natural Resources (DNR) to better manage the deer herd. According to Director Rich Leopold, the DNR's goal is to have a healthy deer herd that provides Iowa's citizens with valuable recreational and viewing opportunities in balance with their concern for safety and the cost to Iowa's agricultural and landscape producers.

As any hunter can tell you, Iowa is known among sportsmen all over the world for the quality of its deer herd. Deer hunting generates over \$200 million in economic activity annually in Iowa, provides jobs for nearly 3,000 Iowans, and is responsible for over 2.1 million days of recreation annually. However, we must balance the positives that stem from our deer herd with the safety of our citizens and their property.

With this in mind, I am pleased that the DNR recently announced that the number of deer/vehicle collisions reported to the DNR was down by nearly 10 percent last year. Additionally, a recent U.S. Department of Agriculture survey found that the number of operators reporting damage from deer had declined by 16% since the last survey in 2002.

While these are positive steps, more needs to be done. For instance, in the Sweet Marsh Unit (Bremer, Black Hawk, Fayette, Buchanan, Clayton and Delaware counties), increased doe harvest over the past five years has begun to reduce numbers toward DNR goals but not as rapidly as anticipated. Therefore, 1,400 additional antlerless licenses will be made available this fall in order to reduce deer numbers to the DNR's goal. I will continue to monitor this issue as a member of the Natural Resources Committee to protect the interests of sportsmen, motorists, and all of us who enjoy Iowa's beautiful natural blessings.



**Andrew with the Denver Parade Team.**

I had another busy couple weeks around the district, including a great parade at Denver's Break-away Days celebration. I also was proud to attend an award ceremony at the Oelwein Health Care Center recognizing the care center's achievement of earning the Governor's Award for Quality Care. It was a proud and deserving day for those who work at the care center.



**Rep. Wenthe visits with Dwayne and Ellie Hummel, Fayette, during a home health care visit organized by Palmer Lutheran Health Center. Wen-**

**the was learning more about the benefits of homecare.**

Finally, I'd like to thank Dwayne and Ellie Hummel of Fayette for opening their home to me during a Palmer Lutheran Health Center Home Visit. The Hummels are able to utilize programming provided by Palmer Lutheran's homecare unit, which enables them to continue living in their home. It's a great program and I'm glad the Hummels and the staff at Palmer Lutheran were able to share more about it with me.

## Long Term Recovery Planning

The Rebuild Iowa Task Force for Long Term Recovery Planning met on August 7 to develop recommendations for the Rebuild Iowa Commission. This group was challenged to take advantage of the mixed opportunities the weather has given Iowa to make decisions for a safer, smarter, and stronger Iowa. The group was encouraged to look beyond the incidents of this spring and summer, as these events could have happened any where in the state, and think about long-term planning for the entire state.

The task force received information from Gary Taylor, a specialist in community and regional planning with Iowa State University Extension, and Gary Lozano, with RDG Planning, on sustainable development, smart growth, and best practices in community and regional planning.

Sustainable development meets the needs of the present without compromising the ability of future generations to meet their own needs. In terms of land use, sustainable development promotes the environmental, social and economic health of communities. The current practice in many urban areas has seen land use doubling compared to the rise in population. Inefficient land use has resulted in increased commutes and automo-

bile travel, and depressed rate of walking and alternative transportation use.

Smart growth encourages more mixed land uses, compact building designs, a range of housing opportunities, walkable neighborhoods, open spaces, and offers a variety of transportation choices. Smart growth encourages a higher-population density development, which provides a richer labor market, more community amenities and alternative transportation systems.

The best practices for communities are to plan. Some communities do not have zoning. Communities need to adopt and update comprehensive community development plans. This would allow the communities to adjust their plans to address the adversities created by natural disasters. The plans can take into consideration storm water management, conservation development, smart growth, quality development and neighborhood based planning.

The task force also heard from Steve Castaner and Benjamin Alexander, who are FEMA Emergency Support Function 14 (ESF 14) specialists. ESF 14 is a special program under FEMA to help communities with extreme devastation through the long term planning

process. The task force was encouraged not to let the opportunity for money drive their decision making process, but rather be driven by their vision for the future of the community. Community involvement is needed in the development of that long term plan.

The task force developed a preliminary list of recommendations for issues and gaps that long term recovery plans could address:

- Set up a state Disaster Recovery Fund to provide immediate financial resources in the form of a loan to communities to address impacts that are decided locally.
- Expand Individual Assistance Programs and provide administrative funds and resources.
- Address flooding issues on a watershed basis.
- Incorporate smart growth practices where applicable.
- Identify best practices from other states.
- Increase use of insurance as a risk management tool, and explore opportunities to use insurance for additional mitigation funding.

- Provide more flexibility to local governments and expand 28E agreements.
- Investigate ways to deliver assistance more rapidly.
- Provide expansion of state micro-enterprise support (bridge funding, grants, or loans).
- Seek state support for County Emergency Management Coordinators both in authority and funding.
- Shift around state funds and resources as needed.
- Ensure that necessary data is accessible and all-inclusive to make long-term recovery decisions.
- Remove or raise the county mental health (MH/DD) expenditure cap for disaster affected areas.
- Develop a comprehensive communication plan and network

structure for individuals and participating agencies.

- Require all communities to institute comprehensive planning that includes disaster resiliency.
- Form a State Planning Agency to guide local planning and response and enforce local planning requirements that include rural perspectives.
- Move funds from Department of Natural Resources focus to economic development.
- Coordinate emergency management, transportation, health, and other plans.
- 28Es: require usage, enhance regional approaches, and creative approaches for problem solving.
- Develop a standard source of information structure for areas affected by disasters.

- Design Iowa-specific plans.
- Empower local elected officials to make decisions for their community.

### **Additional Meetings**

The Rebuild Iowa Advisory Commission has scheduled two additional meetings to review the final reports from all nine task forces and develop recommendations. The commission will be meeting August 25 and 26 at the Comfort Suites in Urbandale, next to Living History Farms. The Commission plans to meet from 1:00 to 5:30 p.m. on Monday the 25 and 8:00 a.m. to noon on Tuesday the 26.

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## **Governor Has Broad Powers to Address Emergencies**

Most Iowans may be familiar by now with the authority the Governor has to declare a state of disaster emergency, but Iowans may be less familiar with the additional authority Iowa law, Chapter 29C.6, grants the Governor. Governor Culver is currently reviewing these options and the recommendations of the Rebuild Iowa Commission to determine if there is a need for a special legislative session.

When a disaster has been declared a major disaster by the President of the United States, the Governor has the authority to:

- Enter into purchase, lease, or other arrangements with any agency of the United States for temporary housing units to be occupied by disaster victims.
- Acquire sites necessary for such temporary housing and to do all things required to prepare such sites to receive and utilize tempo-

rary housing units, by advancing or lending funds available to the Governor from any appropriation made by the legislature or from any other source, allocating funds made available by any agency, public or private, or becoming a copartner with the political subdivision for the execution and performance of any temporary housing for disaster victims project.

- The Governor may temporarily suspend or modify, for not to exceed sixty days, any public health, safety, zoning, transportation, or other requirement of law or regulation within this state by proclamation, when the Governor deems such suspension or modification essential to provide temporary housing for disaster victims.
- Upon the Governor's determination that a local government of the state will suffer a substantial loss of tax and other revenues from

a major disaster and has demonstrated a need for financial assistance to perform its governmental functions, the Governor can apply to the federal government on behalf of the local government for a loan, receive and disburse the proceeds of any approved loan to any applicant local government, determine the amount needed by any applicant local government to restore or resume its governmental functions, and certify the same to the federal government; however, no application amount shall exceed twenty-five percent of the annual operating budget of the applicant for the fiscal year in which the major disaster occurs.

- The Governor may recommend to the federal government, based upon the Governor's review, the cancellation of all or any part of repayment when, in the first three full fiscal year period following the major disaster, the revenues of the

local government are insufficient to meet its operating expenses, including additional disaster-related expenses of a municipal operation character.

The Governor has the following authority without a Presidential disaster declaration:

- Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders or rules, of any state agency, if strict compliance with the provisions of any statute, order or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency by stating in a proclamation such reasons. Upon the request of a local governing body, the Governor may also suspend statutes limiting local governments in their ability to provide services to aid disaster victims.
- On behalf of this state, enter into mutual aid arrangements with other states and to coordinate mutual aid plans between political subdivisions of this state.

- Cooperate with the President of the United States and the heads of the armed forces, the emergency management agencies of the United States and other appropriate federal officers and agencies and with the officers and agencies of other states in matters pertaining to emergency management of the state and nation.
- Utilize all available resources of the state government as reasonably necessary to cope with the disaster emergency and of each political subdivision of the state.
- Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency management.
- Subject to any applicable requirements for compensation, commandeer or utilize any private property if the Governor finds this necessary to cope with the disaster emergency.

- Direct the evacuation of all or part of the population from any stricken or threatened area within the state if the Governor deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery.
- Prescribe routes, modes of transportation, and destinations in connection with evacuation.
- Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises in such area.
- Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles.

## Disaster Unemployment Deadline Extended Again

Iowa Workforce Development has requested and received an extension of the filing deadline for Disaster Unemployment Assistance (DUA). All 73 counties declared eligible for DUA have an extended filing deadline of September 12, 2008. All claims must be filed by that date.

Iowans living or working in any of the 73 declared counties who have lost their job due to the recent bad weather can apply for these federal benefits. The disaster declaration is for the severe storms, tornadoes and flooding that began on May 25, 2008, and continued through June.

The benefits cover self-employed workers not usually entitled to unemployment insurance,



including Iowa farmers. Those eligible for benefits in addition to individuals who lost their jobs directly due to the severe storms, flooding, and tornadoes may also include:

- Individuals who are unable to reach their job or self-employment location because they must travel through the affected area and are prevented from doing so by the disaster,
- Those that were to start employment or self-employment but were prevented by the disaster,

- People who became the breadwinner or major support for a household because of the death of the head of household due to the disaster, or
- Individuals who cannot work or perform services in self-employment because of an injury caused as a direct result of the disaster.

Workforce Development said that the extension provided needed relief to Iowans and particularly farmers, who are still assessing crop damage.

People applying for DUA need to provide proof of past earnings, such as business records or bank statements and their most recent income tax form, at the time they

file their claim. Any Iowa Workforce Development Center throughout the state can accept

DUA claims or individuals can file on the department's website at "file an unemployment claim." The

Workforce Development website is [www.iowaworkforce.org](http://www.iowaworkforce.org).

## Rebuild Iowa Flood Plain Task Force Meets

The Rebuild Iowa Flood Plain Management and Hazard Mitigation Task Force met on August 6 to come up with recommendations to address flood plain issues that have been brought to light since the floods of this past summer. Nine task forces were developed to gather and review information to assist the Rebuild Iowa Advisory Commission. The commission is to make their initial recommendations for recovery by September 2.

The task force said the number one issue is to get displaced Iowans back into their homes before it gets cold. There also needs to be some type of incentives to help some of these people move out of the flood plain. They also suggested getting experts together to help answer citizens' questions and get communities moving again.

The task force heard from the Department of Natural Resources on their current flood plain management program. There are currently 498 communities participating in the National Flood Insurance Program. Of these, only 136 have adequate flood plain maps and sufficient staff resources for DNR to authorize the community to review many project types. Within these communities, flood plain permits are still required from DNR for bridges, dams and levees that re-

quire detailed hydraulic analysis. For the remaining 362 communities, a DNR permit is required for all flood plain development in addition to bridges, dams and levees.

The department currently has six people working on flood plain issues for the entire state. Four staff review and write permits and assist in over 1,500 flood plain permit requests per year. One person provides technical assistance to the 136 Iowa communities that have delegated authority for flood plain development. And one person is designated to inspect the 133 dams in Iowa.

Currently, the department is prioritizing all permitting issues relating to the disaster emergency. Other flood plain permits requests will be worked on in the future.

### **Flood Plain Mapping**

DNR has been working with Iowa's homeland security and emergency management division on flood plain maps. They noted that data does not exist for 47 counties and needs to be updated in the other 52.

Flood plain maps provide fundamental data on elevation of flood plains, which can be used for all kinds of decisions. The maps assist with emergency response and

community planning, help with insurance determinations, and be used for community land use planning and design purposes.

In 2004, several state agencies pooled their resources and invested in a Light Detection and Ranging (LiDAR) technology for developing 2-foot interval topographic elevation maps for the entire state. LiDAR data could be used to create flood plain maps that would be easily accessible to all state and federal agencies, and most importantly, to Iowa's citizens and businesses.

LiDAR coverage is currently being conducted across the state. The department's hope is that it will be completed by the end of 2009. Of the areas that have been completed to date, the Army Corps of Engineers told task force members they currently use the product and love it.

DNR is working with FEMA to get them to recognize these LiDAR flood plain maps. DNR said LiDAR data can be converted to flood plain maps at a cost of \$155,000 per county. At this cost, all 99 counties could be completed in 10 years. With additional funds, they could be done earlier.

## EPC Commission Denies Construction Permits

Earlier this week, the Iowa Environmental Protection Commission (EPC) denied two construction permits for confined animal feeding operations (CAFO) in Dallas County. The EPC voted 6-2 to deny the permits. The EPC is a panel of citizens who provide pol-

icy oversight over Iowa's environmental protection efforts. The members are appointed by the Governor and confirmed by vote of the Senate for four-year terms.

The two separate CAFOs passed the requirements of the master matrix, a system that each

county may adopt to evaluate the siting of CAFOs. However, the EPC denied the permits citing the responsibilities of the EPC and the Department of Natural Resources to protect the environment, and manage energy, fish, wildlife, and

land and water resources in this state.

The EPC members voting to deny the permits said the proposed locations would increase the potential damage to an already impaired watershed. The impaired watershed in question is the Raccoon River watershed which provides drinking water for the city of Des Moines and some surrounding communities.

In addition, members felt that the master matrix is inadequate and it needs to review by the Legislature. Opponents of the master matrix feel that it does not meet the needs of the environment and the quality of life for surrounding neighbors. Supporters of the matrix feel it is a good balance between protecting the environment and growing the pork producing industry in Iowa.

Some groups and individuals feel that the EPC has over-extended its authority. They feel that if a CAFO passes the master matrix, then the permit should proceed as planned. The permittees have 30 days to decide whether to appeal the decision to an Administrative Law Judge.

## Child Labor Investigation Handed to Attorney General

Adding to the problems at Agriprocessors after the May 12, 2008, raid where 389 undocumented workers were arrested has been the revelations of alleged negligent worker safety violations and child labor violations at the plant.

The Iowa Labor Commissioner's Office has completed an intensive child labor investigation at Agriprocessors in Postville. The investigation, which spanned several months prior to the May 12 raid, has produced 57 cases, with multiple child labor violations in each case. A second portion of the investigation is still pending, which may lead to additional cases.

"The investigation brings to light egregious violations of virtu-

ally every aspect of Iowa's child labor laws," indicated Dave Neil, Iowa Labor Commissioner. "It is my recommendation that the Attorney General's Office prosecute these violations to the fullest extent of the law."

Agriprocessors' alleged violations include working minors in prohibited occupations, failure to obtain work permits, exceeding the allowable hours for youth to work, exposure to hazardous chemicals, working with prohibited tools and others. Iowa's child labor laws indicate that every day, during which a violation continues, will constitute a separate and distinct offense.

Under Iowa Law, child labor investigations are turned over to the county attorney's office for prosecution, however the county may choose to turn the case or cases over to the Iowa Attorney General Tom Miller's Office. The Allamakee County Attorney's Office had previously indicated to the department their desire to turn the case directly over to the Iowa Attorney General's Office.



Besides child labor violations, the Labor Commissioner is still in the process of conducting an investigation into general wage violations at the Postville plant.

## Crisis Services Available to Iowans

The recent tornadoes and flooding have caused a tremendous mental and emotional strain on Iowans. As a result, the Mental Health and Disability Services of the Department of Human Services (DHS) implemented a disaster response plan and secured federal grants to sharply expand service in the hardest hit counties.

DHS acted quickly by establishing Project Recovery Iowa to help with the imminent crisis. The efforts focus on the victims of the

storms but also help the emergency responders with the stress of assisting those in need.

Seventy additional crisis response counselors were put in place insuring a wide-range of diversity. Counselors include teachers, farmers, social workers, ministers, and are representative of Iowa's rich cultural diversity. At least 5,800 people had brief contact with counselors at disaster recovery centers, churches, schools, or other places where people affected by the disas-

ter were present. Hundreds more received extended counseling services, many the result of door-to-door visits by counselors in hard hit areas.

To implement the program, DHS received \$350,000 in FEMA grants to fund Project Recovery Iowa for crisis assistance for up to 60 days. In addition, DHS has applied for an additional grant of \$4.6 million to carry the project an additional nine months. This program provides individual crisis counsel-

ing services, group crisis counseling services, educational services, and referrals to long-term services.

To access any of the services you may call the Iowa Concern Hotline at 1-800-447-1985.

## Gas Price Decline

As a result of crude oil prices going down, Iowans have seen lower gasoline and diesel prices at the pump. Lower oil prices are mainly due to reduced demand caused by high prices and slowing economies in the U.S. and elsewhere.

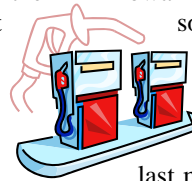
The August 18 average price of 10 percent ethanol blended mid-grade gasoline in Iowa was \$3.54 per gallon. This is a ten percent decrease from July's average price of \$3.93 per gallon. However, the current price is 28 percent higher than the August 2007 price of \$2.77 per gallon.

The August 18 average price for diesel in Iowa was \$4.23 per gallon, \$0.46 lower than July's price. The current diesel price is 42 percent higher than the August 2007 price of \$2.98.

Crude oil prices have seen a steady downward trend in the last month. A barrel of West Texas Cushing Sweet Crude Oil settled at \$113.77 on August 15. The August 15 price is a 15 percent decrease over July's price of \$134.60. However, current oil prices are 59 percent higher than the August 2007 price of \$71.49.

The last month has brought good news for Iowans who use natural gas for heating. Since early July, there has been a continued, significant decrease in natural gas prices.

On August 15, natural gas was trading at \$7.82/MMBtu, down \$3.40/MMBtu from last month and \$0.52 higher than one year ago, a seven percent increase.



A survey completed by the Iowa Department of Natural Resources on August 15, 2008, indicated that the average retail price of heating oil in Iowa was \$3.78 per gallon, \$0.55 lower than last month, and \$1.17 higher than the price of heating oil at this time last year, a 45 percent increase. The same survey found that propane is selling in Iowa for an average of \$2.13 per gallon across the state, \$0.08 lower than a month ago. The current price is \$0.60 higher than the price in August of last year, a 39 percent increase.

Tips for saving energy and money at home and on the road are available at [www.EnergySavingTips.gov](http://www.EnergySavingTips.gov)

## Plumbing and Mechanical Systems Board Meets

The Plumbing and Mechanical Systems Examining Board held its regular meeting on Tuesday, August 19 at the Department of Public Safety offices in Des Moines.

This was the second meeting of the newly formed board. They are continuing the organizational process begun at their first meeting in order to develop rules and begin issuing new licenses.

The board was appointed by Governor Culver because of legislation passed in 2007. The new law requires all plumbers and mechanical contractors to obtain a statewide license if they provide plumbing, heating, ventilation, and air conditioning services. Certain persons

are exempt from this licensure requirement.

Local jurisdictions that issue licenses as of July 1, 2008, are required to continue to issue licenses until June 30, 2009. On July 1, 2009, all local licensing programs become null and void. State enforcement provisions will begin January 1, 2009.

At its first meeting, the board formed four subcommittees to work on recommendations in the areas of administrative rules, testing and credentials, the application process for licenses, and reciprocity with other states. Each of the subcommittees has begun meeting and will bring their recommendations to the full board at future meetings.

The board heard public comments at its first meeting relating to continuing education requirement for licensure; keeping the grandfathering clause; and that the board needs to make sure as they proceed through the rulemaking process that small businesses are not put out of business.

The intent of the legislation is to make it easier for plumbers to work in Iowa by requiring only one state-wide license rather than a license issued by each jurisdiction where the plumber is performing work. A statewide license could also provide for reciprocity with other states that recognize Iowa's licensure requirements as substantially the same as their requirements.

### Future Board Meetings

The board's regular meetings will be held on the third Tuesday of each month in the first floor conference room at the Department of Public Safety. The next meeting is scheduled for September 16.

Information about the licensure program may be found on the Department of Public Health's website at <http://www.idph.state.ia.us/eh/plumbing.asp>.

Additionally, anyone wishing to be kept up to date on the board's actions may be added to their listserve by contacting the department at 515-281-7726.

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## Criminal Code Reorganization Subcommittee Meets

The Foundational Subcommittee of the Criminal Code Reorganization Interim Committee met in Iowa City. Professor James Tomkovicz, Edward Howrey Professor of Law at the University of Iowa College of Law, acted as chair of the subcommittee. The subcommittee previously reviewed the criminal law requirement of mens rea, a guilty mind, and actus reus, a guilty act.

During the second subcommittee meeting, the subcommittee discussed potential changes to the Iowa criminal code regarding causation, mistake of fact and law, and accomplice liability.

The subcommittee first discussed *causation*. Typically, for causation to be an issue in a crime, the crime, by definition, requires a defendant to cause some result by his or her act or omission. For example, homicide requires a defendant to "cause the death of" another. Current Iowa law does not codify causation; instead allowing

courts to interpret the law of causation.

Professor Tomkovicz suggested any detailed codification on causation would contain ambiguities and therefore the subcommittee should not propose codifying causation in criminal law. Representative Kurt Swaim (D – Bloomfield), who co-chairs the Criminal Code Reorganization Interim Committee, noted that causation involves very few issues in Iowa law and agreed with Professor Tomkovicz's proposal.

The subcommittee next discussed *mistake of fact and law* in criminal law. Professor Tomkovicz stated that the basic concept behind a mistake of fact or law is that because of the mistake a defendant did not have the required mental state required by the elements of a crime. Therefore, mistakes do not really function as a defense for a defendant, but instead prevent the prosecution from proving an element of a crime. While Iowa has a

provision for mistakes of fact and law, the subcommittee discussed whether other provisions, such as those found in the Model Penal Code, were more appropriate.

Finally, the subcommittee discussed *accomplice liability*. The basic concept for accomplice liability is who should be held criminally liable for the acts of another. It is important to note that this does not deal with vicarious liability, such as liability of a parent for the acts of a child. The subcommittee discussed the Iowa Code regarding accomplice liability and potential changes to the Iowa Code to define the basic elements of accomplice liability.

The subcommittee will now take their recommendations to the full Criminal Code Reorganization Interim Committee that will ultimately make recommendations for changes to the criminal code next legislative session.