

Representative Jeff Kaufmann – July 20, 2007

Hello 79th District:

This electronic Newsletter is full of detailed information on the budget, renewable energy, two Supreme Court decisions that could have a big impact on some Iowa schools, and a reminder of our upcoming sales tax holiday.

Thanks to our great legislative staff for this information. I hope to see you at parades, fairs, and a wide variety of community events. Congratulations to Lowden on their special 150th anniversary. Remember if I can help you with a problem or issue just e-mail, call, or write. Jeff

Auditor Extremely Critical of FY 07, 08 and 09 Budgets

12.7% increase in revenue needed to cover spending in FY 09

On June 6, State Auditor Dave Vaudt released his review of the FY 2008 budget approved by the Legislature and signed by the Governor. He was very critical of three things:

Shifting \$52 million of FY 08 spending into FY 07 to get around the expenditure limitation

Spending exceeding projected revenue by over \$300 million in FY 08

Large amount of built-in spending for FY 09

The Auditor stated that appropriations of \$71 million were made for additional spending under the Fiscal Year 2007 budget. "It's important to realize, however, only \$18.5 million, or 25 percent, of that amount reverts if not spent in Fiscal Year 2007," emphasized Auditor Vaudt. The remaining \$52.5 million, or 75 percent, of the supplemental appropriations do not revert at the end of Fiscal Year 2007. They carry forward and create additional spending authority in Fiscal Year 08, which is contrary to the 99 percent expenditure limitation contained in Iowa law. Shifting budgeted expenditures from one fiscal year to another is not a good budgeting practice and only adds to the lack of clarity in Iowa's budgeting process, especially as to Iowa's true spending increases from year to year. "While it's not the first time this technique has been proposed or used, I'm disappointed at the magnitude of the Fiscal Year 07 supplemental appropriations that do not revert," he added.

As Auditor Vaudt has frequently stressed, "The key to responsible budgeting is to bring expenditures in line with revenues." He noted total spending in the Fiscal Year 08 budget exceeds total anticipated revenues by over \$300 million, despite the projected \$130 million of additional revenue from raising the cigarette and tobacco tax. "The increased spending of more than \$550 million, or approximately 10 percent, in Fiscal Year 08 compared to Fiscal Year 07, substantially exceeds Iowa's most recent historical three-year average revenue growth of \$336 million. Even when the additional cigarette and tobacco tax revenues are included, spending growth significantly outpaces the anticipated revenue increase," he concluded. "I'm looking for progress—for some steps in the right direction. Unfortunately, with this Fiscal Year 2008 budget, that progress is not taking place."

"If Iowa followed the good budgeting practice of funding all its General Fund costs out of only General Fund revenues, a \$764 million, or 12.7 percent, revenue increase would be necessary in Fiscal Year 09 to cover the increased cost commitments and bring costs paid from non-General Fund resources back into the General Fund," warned Auditor Vaudt. "That's before we even consider all the other cost increases, such as Medicaid, health insurance, fuel and utilities, the State will face in Fiscal Year 09," he added.

"Just imagine if Iowa encounters any type of fiscal downturn. Now imagine the challenges and the drastic steps we would need to take to align expenditures with reduced revenue growth, or worse yet, reduced

revenues.” Auditor Vaudt cautioned our ‘rainy day fund’ would only serve as a short-term solution to a potentially long-term problem. Longer-term planning and a longer-term mindset are critical to Iowa’s sound financial future. Despite increased revenue, the concern lies with the spending levels.

Legislative Council Authorizes Two Ag-Related Interim Committees

On June 13, the Legislative Council met and agreed to authorize 13 legislative interim committees, two of which involve agricultural issues. The two ag-related interim committee authorizes are (1) Animal Feeding of Distillers Dried Gains Study Committee; and (2) Livestock Odor Study Committee.

The Animal Feeding of Distillers Grain Study Committee is charged to consider issues related to standards for distillers dried grains (DDGs) that can be used in formulating rations for livestock. DDGs are the main by-product of ethanol production from cereal grains such as corn. As Iowa ethanol production continues to expand and it takes an increasing proportion of Iowa corn crop, livestock producers are concerned about what this means to their operations. A recent National Agricultural Statistics Service reports that in 2006 ethanol co-products were fed to livestock at 38% of dairy operations, 36% of cattle on feed operations, 13% of beef-cow operations and 12% of hog operations. While livestock producers can use DDGs as a partial substitute for corn as feed for livestock, the variable feed value of DDGs makes it difficult to fine-tune livestock rations.

DDGs are relatively easy to put into cattle rations, but are more problematic for non-ruminant animals such as swine and poultry. Fermentation of corn into ethanol and DDGs leaves a feed that has more of the energy left in fiber carbohydrates and fats/oils than grain typically has. Most of the DDGs’ fiber carbohydrates energy fraction can be digested by ruminants, but have limited digestibility in the case of simple stomach animals such as swine and poultry. This circumstance usually limits the use of DDG to 10 to 15% of swine and poultry rations. DDGs also contain the unfermented oil fraction of grain and this component can cause problems with ruminant animals if fed at high levels and for short time periods. Some dairy producers have reported an increase in kidney infection/necrosis problems with their cows that have long-term and high DDG feed rates, and there is a question on whether there are some chemical residues or fungal product being concentrated in the DDG that is a factor in this livestock ailment.

Furthermore, as ethanol producers increase their yield of ethanol production from each bushel of grain they are increasingly beginning to extract the oil from the grain to refine it into biodiesel, and are starting to treat grain fiber to allow further conversion into ethanol or are starting to use it for fuel to supplement petroleum or coal fuel for the distillation process. Hence, if livestock producers are to continue and/or expand the use of DDG in livestock rations, they will need to know with confidence the feed value of the DDG they purchase.

The Livestock Odor Study Committee was charged to consider issues relating to odors associated with livestock. The Committee is to study and make recommendations for:

Additional state funding

Research into cost-effective management practices, facilities, equipment, and practices to mitigate odor from livestock production facilities Iowa State University Veterinarian Laboratory review of airborne disease research Research for utilizing manure and other livestock wastes as sources of nutrient recovery and renewable energy.

The objective of this committee is to address the odor problem that continues to vex both livestock farmers and non-farm residents who live near sizable livestock operations. About a decade ago, the Legislature, as part of the process that substantially expanded state regulation of livestock operation by

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the DNR, appropriated significant state funds to ISU to study potential odor control technology and practices that could mitigate swine odors. That investment identified some practices and treatment options that worked and some that did not.

A generalization of the results of that effort was that there were systems that could control 70-90% of the odor 75-95% of the time. That earlier investment was complicated by the fact that basic understanding of odor formation and odor transport was still limited. Plus, the technology of how swine manure was stored drastically switched from separate unenclosed earthen structures (lagoons and basins) to concrete semi-enclosed structures usually located under the livestock building.

Recent regulatory changes, and increased energy prices and fertilizer values have resulted in the downsizing of a typical new swine facility, but a proliferation of the number of facilities and expansion into areas where most swine production had largely disappeared during the prior two decades. However, as the prospect for continued high energy prices solidifies, there is growing interest in using the manure through methane conversion processes into electricity or using pyrolysis (a pressure and heat process) to form liquid hydrocarbon fuels that could be made into diesel fuel.

Just this week, construction began on a methane plant developers say will turn livestock waste into fuel. Minnesota-based Bison Renewable broke ground on a \$12 million plant west of Hull, Iowa. The firm says that this plant is just the first of 20 such plants that it intends to build across the nation. Steve Nelson, finance director for Bison, said that Sioux County was selected because per square mile, the county is in the top five in the U.S for livestock density. Bison raised capital for the plant from 200 local investors. It plans to contract with livestock producers for manure which will comprise about one-half of the input for the plant, with the balance coming from other wastes such as animal fat other industrial wastes. Anticipated start up of the plant's operations is the end of 2008.

U.S. Supreme Court Rulings will Affect Iowa Schools

Two recent education decisions, released in last two weeks of the U.S. Supreme Court's 2007 term, rewrite the ground rules for voluntary desegregation and a student's right to free speech at school sponsored functions.

Desegregation Gets a New Look

The Seattle school district, with 10 high schools and a 60 percent non-white population, operated under a voluntary desegregation plan until the filing of this U. S. Supreme court case in 2001.

The Seattle district asked ninth-graders to pick their top three choices for high school. If their choice of school was "oversubscribed" the district made the decision based upon three tie-breakers – first, a sibling already attending the high school second, proximity to the student's home and, finally, race.

Five justices declared the plan unconstitutional because it made the student's race "the" deciding factor in where the student attended high school. The Court's definition of affirmative action in education permits race to be "a" factor but not "the" factor in making student placement in the school district.

Chief Justice Roberts, joined by Justices Scalia, Thomas and Alito, affirmed that a limited, narrowly tailored use of race is appropriate. The majority opinion states that it does not overturn Brown vs. Board of Education, despite such a clear desire by Justice Thomas.

Chief Justice Roberts wrote, "The way to stop discrimination on the basis of race is to stop discrimination on the basis of race." He argues that this decision is more faithful to the heritage of Brown.

Justice Kennedy joined the majority in the decision but wrote a separate opinion saying that four justices signing the Roberts opinion were too dismissive of a compelling interest schools have in avoiding racial isolation.

Kennedy hinted at the characteristics he feels would pass constitutional muster including strategic site selection of new schools, school attendance zones and directing resources to special programs. These, Kennedy says, are permissible because they avoid the labeling and sorting of children by race.

Writing the principal dissenting opinion, Justice Breyer sharply criticized the majority for their "radical" step away from settled law that would strip local schools of the tools they need to prevent re-segregation.

Breyer predicts that the ruling would "substitute for present calm a disruptive round of race-related litigation." "This is a decision that the court and the nation will come to regret," Breyer writes.

Justice Stevens, a thirty-two year veteran of the Supreme Court, chastised the majority saying that it is a cruel irony that the majority rewrites the history of one of the court's most important decisions. "It is my firm conviction that no member of the court that I joined in 1975 would have agreed with today's decision."

Equally pointed and personal, Justice Thomas concurred with the majority, writing, "If our history has taught us anything it has taught us to beware of elites bearing racial theories." In a footnote he adds, "Justice Breyer's good intentions, which I do not doubt, have the shelf life of Justice Breyer's tenure."

Schools Can Regulate Drug-Related Student Speech

In an equally pointed and sometime personal manner, the nine Supreme Court justices argued whether a Juneau, Alaska high school student had a right to unfurl a 14-foot sign reading "BONG HiTS FOR JESUS" at a school sponsored event.

In this case, 17 year-old Joseph Frederick and four other students displayed their unique message on a winter morning when the Olympic torch made its way through Alaska on its way to the Winter Olympics in Salt Lake City. Juneau High School principal Deborah Morse sanctioned the event which allowed students to stand out on the curb to watch the torch bearer pass.

Frederick was not as interested in the torch bearer as he was the media covering the event. At lower court proceedings, Frederick admitted that his nonsensical message was aimed at getting his face on TV and not intended as advocating drug use.

In writing for the 5-4 majority, Chief Justice Roberts agreed with Principal Morse that the banner would be interpreted by those viewing it as promoting illegal drug use.

The Chief Justice said that Tinker, the Vietnam-era Des Moines School District case, stands in that a student does not leave his or her constitutional right to free speech at the door of the school building.

Roberts affirms, however, that the constitutional rights of the students in public schools are more limited than the rights of adult in other settings. As such, the compelling state interest in deterring illegal drug use among this nation's children takes precedence over Frederick's desire to get on TV.

Writing for the minority, Justice Stevens dismissed the conclusion that the "ridiculous banner" was drug advocacy. He took issue with the lack of clarity in what the majority meant by "drug use". Stevens asked, is a banner proclaiming, "WINE SiPS for JESUS" equally banned speech because it is illegal for minors to drink?

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School districts across the country herald this decision for two reasons. First, the decision affirms the ability of the school district to limit potentially harmful speech. Of equal importance is that the decision stopped Mr. Frederick's separate cause of action against the school principal claiming a violation of Mr. Frederick's civil rights.

Report Shows HAWK-I Working for Iowa's Kids

A report released by the University of Iowa this week showed that more children in Iowa have medical insurance than they did five years ago and access to health care for Iowa children remains strong. Much of this success can be credited to the state's Healthy and Well Kids in Iowa program, better known as HAWK-I.

According to the report produced by the University of Iowa Public Policy Center, just three percent of children were uninsured in 2005. This figure is half the number of Iowa children found to be uninsured in 2000. This rate is also dramatically lower than the national average of 9 percent. The level of uninsured parents in Iowa, at 11 percent, did not change from 2000.

The study relied on information obtained from interviews with 3,600 families across the state at the end of 2005 and the beginning of 2006. The report was released to the public Tuesday.

Peter Damiano, director of the Center, said the survey shows that public programs, such as Medicaid and HAWK-I, are reaching out to children in the state and country; HAWK-I is what Iowa calls the federal State Children's Health Insurance Program.

"Well, obviously, it speaks well to the Medicaid and HAWK-I expansion that began in 1997," Damiano said in the Iowa City Press Citizen Wednesday. "The bottom line is, those programs have been working to insure children in Iowa." Damiano went on to suggest that the program could serve as a model for providing coverage to uninsured adults in Iowa.

The report said the number of children who had public health insurance, Medicaid or HAWK-I, grew from 11 percent in 2000 to 20 percent in 2005. Although the study found there was some disparity among income levels when it came to access to health care, only 1.6 percent of children who needed medical care did not get it, compared to 3 percent in 2000. The report showed that parents of lower-income children were more satisfied with their child's health care coverage than higher-income parents. Lower-income levels did, however, have a harder time accessing care for children with special needs.

The study relied on information obtained from interviews with 3,600 families across the state at the end of 2005 and the beginning of 2006.

At a time when Iowans are looking for ways to improve access to healthcare coverage for some groups, it is possible that HAWK-I serves as a model for a successful approach to providing health care to Iowans.

Iowa Workers' Compensation

The Iowa Workers' Compensation law requires most employers to provide benefits to eligible employees who have injuries arising out of and in the course of employment.

There are few classifications of employees who are exempt from the law, and therefore not eligible for benefits. Proprietors (independent contractors), limited liability company members and partners are not considered employees but may elect to be covered by purchasing a valid workers' compensation insurance policy specifically including the proprietor or partner.

Most employees who are injured in Iowa, working under contract of hire made in Iowa, or whose employment is principally localized in Iowa, are eligible for benefits if they have a job-related injury.

In Iowa, "injury" is defined very broadly to include any health impairment other than the normal building up and tearing down of body tissues. The health impairment must be a result of employment activities. Diseases and hearing losses are also considered to be injuries if they are a result of the employment activities or exposures.

An employee is not entitled to benefits for a preexisting injury or disease unless it is aggravated, or worsened, by the employment.

The employer provides medical care reasonably suited to treat the employee's injury, and has the right to choose the medical care. If the employee is dissatisfied with the care offered, the employee should discuss the problem with the employer or insurance carrier. In certain situations, the employee may wish to request alternate care. If the employer or insurance carrier does not allow alternate care, the employee (through appropriate proceedings) may apply to the Workers' Compensation commissioner for alternate medical care.

If the employer-retained physician gives a rating of permanent impairment, which the employee feels is too low, the employee does have a right to another examination by a doctor of the employee's choice at the employer's expense.

The majority of disputes in workers' compensation claims can be resolved by open communication between the employee, employer and insurance carrier. The employee should be able to learn the reasons for any action taken, as well as the nature of the evidence supporting the action. If the dispute is not resolved, a contested-case proceeding may be initiated before the Workers' Compensation Commissioner. The Workers' Compensation Commissioner is the head of the Division of Workers' Compensation, which is part of Iowa Workforce Development. Workers' Compensation has the responsibility of administering, regulating, and enforcing the workers' compensation laws. Though the Workers' Compensation Commissioner's office cannot represent the interests of any party, the agency provides information regarding the provisions of the Workers' Compensation Law, the rights of the parties, and the procedures the parties can follow to resolve their disputes.

Audit: Drug Treatment in Prison is Lacking

According to a recently released audit, about nine of every ten convicts in Iowa's prisons have histories of drug or alcohol problems, but most will be released without receiving treatment.

The Department of Management (DOM) released a performance audit Tuesday that evaluated licensed drug and alcohol abuse programs operated by the Iowa Department of Corrections (DOC). The study concluded that such programs "had little effect on prison population, operational cost savings, and overall crime reduction."

DOC offers 15 licensed programs in eight prisons with the capacity to serve about 2,000 inmates annually at a cost of about \$3.1 million. But nearly 60 percent of offenders with substance abuse needs are released without treatment, the study said.

Iowa held 8,836 men and women in its state prisons on June 30, 2007. It costs \$23,367 annually to keep each offender behind bars, and preventing one offender from returning to prison from parole or work-release saves about \$5,400 in incarceration costs.

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"Lack of treatment resources was one of the most pressing issues noted by managers, stakeholders and employees alike," the report said. "Budget and staffing reductions and available treatment space limit" DOC's ability to provide substance abuse treatment to many offenders who need it, researchers said.

The study found that just over 12 percent of offenders released after successful completion of substance abuse treatment were convicted of new offenses within 12 months. Almost 27 percent returned for either new offenses or for so-called technical violations, such as failing to report to a parole officer.

Substance abuse treatment lowers the new conviction rate and total recidivism in three of the eight prisons, the research found. The Newton Correctional Facility and the Iowa State Penitentiary at Fort Madison had the best overall performance.

John Baldwin, DOC director, responded to the performance audit in a letter that promised to immediately address key issues cited in the findings. This includes making assessments when inmates are admitted to the state prison reception center at Oakdale to support the concept of the "right offender" receiving the "right treatment," Baldwin said.

In addition, evaluations have been made of community corrections and prison intervention programs, and improvements will be made this summer and fall, he said. Baldwin also said re-entry coordinators are being hired at state prisons in Mitchellville, Newton and Rockwell City, which release the largest numbers of inmates. The goal is to improve re-entry transition planning in collaboration with community re-entry coordinators in all of Iowa's eight judicial districts.

A substance abuse focus group is being developed, and a treatment database used by the Department of Public Health is being used on a pilot basis at two prisons to determine its use in a prison environment, Baldwin said. The prison system is also planning to conduct training to help staff improve their skills in encouraging offenders to improve their behavior, he added.

Gas Tax Decreases

Effective July 1, the gas tax decreased from 21 cents to 20.7 cents. The ethanol tax stayed the same at 19 cents. Iowa's floating rate was established in the FY 2002 Ethanol Sales Promotion Act. This bill provided for changes in fuel tax rates based on the gallons of ethanol-blended gasolines sold in the state from January 1 to December 31 of the previous year. The rates apply to the period beginning the following July 1 and ending June 30. The floating rate was set to expire on June 30 of this year. At that time, the ethanol tax was to return to 20 cents and the gas tax would return to 20 cents. However, in the Standings bill passed this past session the floating rate was extended for five years. The FY 2006 Grow Iowa Values Fund Act established an excise tax of \$.17 per gallon.

Currently, the Iowa fuel tax rate floats between 20 cents and 21 cents while, at the same time, the ethanol tax floats between 19 cents and 20 cents. Some raised concerns the negative affect the floating rate may have on the Road Use Tax Fund, and it may be a discussion point during the TIME-21 interim committee meetings.

Vietnam Conflict Veterans Bonuses Available Soon!

During the 2007 legislative session, legislators approved Vietnam Conflict Veterans Bonuses for persons who served on active duty for not less than 120 days in the armed forces of the United States at any time between July 1, 1973, and May 31, 1975, both dates inclusive, and who were legal residents of the state of Iowa for at least six months immediately before entering into active duty service. The previously established bonus did not include the entire Vietnam Conflict. This bonus ensures that all veterans will be honored and rewarded for their service.

The rules relating to these awards were approved by the Veterans Affairs Commission on July 11. The rules now can be filed with the Administrative Rules Coordinator and will be effective upon filing. Similar to the legislation, the rules are based on the rules developed in the 1970s when this program was last in effect. However, there are provisions that cover compensation from previous bonuses. Other necessary updates are included.

The department is in the process of developing an application and they expect it to be available, and bonuses being approved, within the month.

If you are interested in finding out more information about the eligibility requirements for the bonuses or want to apply for the bonuses, it is recommended that individuals contact their county veterans affairs director or the State Department of Veterans Affairs at (515) 242-5331. The grant applications will be available on www.iowava.org.

Individuals are encouraged to apply early because once the first appropriation runs out, the veteran or their family will have to wait until additional funds are appropriated

Eighth Annual Sales Tax Holiday Less than Three Weeks Away

The 8th annual Iowa Sales Tax Holiday will be held Friday and Saturday, August 3 and 4, 2007. The Iowa Sales Tax Holiday begins at 12:01 a.m., August 3, and ends at midnight on Saturday (August 4). The Iowa Sales Tax Holiday does not include Sunday.

Businesses that are open on August 3 and 4 are required to participate. During this 48-hour time period, no sales tax, including school and local option sales taxes, will be collected on sales of an article of clothing or footwear having a selling price of less than \$100.

For the purposes of the sales tax holiday, "clothing" means: any article of wearing apparel and typical footwear intended to be worn on or about the human body. "Clothing" does not include: watches, watchbands, jewelry, umbrellas, handkerchiefs, sporting equipment, skis, swim fins, roller blades, skates, and any special clothing or footwear designed primarily for athletic activity or protective use and not usually considered appropriate for everyday wear.

Additionally, businesses cannot advertise that they will pay or otherwise absorb the sales tax on items that don't qualify.

Over past several years, some of us in the Iowa House of representatives have attempted to expand the Iowa Sales Tax Holiday to assist Iowa families in back-to-school preparation expenses. Most recently, during the 2007 Legislative Session, Amendment H-2080 to Senate File 590 would have provided for a two-day sales tax holiday for school supplies. Amendment H-2080 was defeated on a 40-53 vote.

During the 2005 Regular Session of the Iowa Legislature, the House approved House File 866, which would have allowed computer purchases (up to \$1,500) to be included in Iowa's annual sales tax holiday. However, the Senate did not take up the bill.

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