

In Natural Resources 5/83

Amend to H 5199 & To Pass 2/12/84 (p. 440)

House File 531

Natural Resources: Cooper, Chair; Grandia, O'Kane, Paulin and Skow USE FILE 531

To Pass 3/21 (p. 958)

MAR 18 1983

HOUSE FILE 531

BY COMMITTEE ON NATURAL RESOURCES

Place On Calendar

Natural Resources  
Schwengel's Chair  
Gettings  
Hall

(Formerly Study Bill 225)

Passed House, Date 3-13-84 (p. 998) Passed Senate, Date 3-27-84 (p. 1089)

Vote: Ayes 95 Nays 2 Vote: Ayes 48 Nays 0

Approved April 30, 1984

## A BILL FOR

- 1 An Act to revise the procedures for the assessment of penalties
- 2 under the laws regulating coal mining.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

HOUSE FILE 531

H-5238

- 1 Amend amendment H-5199 to House File 531 as follows:
- 2 1. Page 1, line 30, by striking the word
- 3 "Injunctive" and inserting in lieu thereof the words
- 4 "Notwithstanding section 17A.18, injunctive".
- 5 2. Page 1, line 47, by striking the word
- 6 "irreparable".

H-5238 FILED FEB. 22, 1984 BY O'KANE of Woodbury

Released one of order 3/13 (p. 998)

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1 Section 1. Section 83.15, Code 1983, is amended by adding  
2 the following new subsections:

3 NEW SUBSECTION. A person who violates a permit condition,  
4 any provision of this chapter or a rule or order issued under  
5 this chapter shall be subject to a civil penalty not to exceed  
6 five thousand dollars per day for each day of violation.

7 If any violation results in the issuance of a cessation order,  
8 a civil penalty shall be imposed. Such penalty shall not  
9 exceed five thousand dollars for each day of violation.

10 In determining the amount of the penalty, consideration  
11 shall be given to the operator's history of previous viola-  
12 tions at the particular mining operation, the seriousness  
13 of the violation, including any irreparable harm to the  
14 environment and any hazard to the health or safety of the  
15 public, whether the operator was negligent, and the  
16 demonstrated good faith of the operator charged in attempting  
17 to achieve rapid compliance after notification of the  
18 violation.

19 An operator who fails to correct a violation for which  
20 a notice or order has been issued within the period permitted  
21 for its correction shall be required to pay a civil penalty  
22 of not less than seven hundred fifty dollars for each day  
23 during which the failure or violations continue.

24 NEW SUBSECTION. Where a notice or order has been issued,  
25 the department may assess a recommended penalty in accordance  
26 with a schedule established by rule. The person to whom the  
27 notice or order was issued may submit written information  
28 within fifteen days of the notice or order to be considered  
29 by the department. The department shall serve the assessment  
30 by certified mail return receipt requested within thirty days  
31 of issuance of the notice or order. The department may re-  
32 assess any penalty if necessary to consider facts not reason-  
33 ably available on the date of issuance of the assessment and  
34 may provide an informal conference to review the recommended  
35 penalty. A person may consent to a penalty assessment by

1 paying the penalty without resort to judicial proceedings.

2 NEW SUBSECTION. Judicial review of any action of the  
3 department shall be in accordance with the provisions of  
4 chapter 17A.

5 NEW SUBSECTION. If a person violates a permit condition  
6 or violates a provision of this chapter, or a rule, or order  
7 issued under this chapter, the attorney general shall, at  
8 the request of the department, institute a civil action in  
9 the district court for injunctive relief or for the assess-  
10 ment of a civil penalty as determined by the court. If any  
11 violations result in the issuance of a cessation order under  
12 section 83.14, the department shall request the attorney  
13 general to institute a civil action in the district court  
14 for the assessment of a civil penalty. Injunctive relief  
15 to prevent or abate any violation of this chapter, permit  
16 condition, rule, or order issued under this chapter shall  
17 be available upon proof of the violation. A final order of  
18 the department is judicially enforceable and is not subject  
19 to collateral attack in any judicial proceeding if opportunity  
20 for hearing and judicial review were available to the person.

21 An appeal bond shall be required for any appeal of a  
22 judgment assessing a civil penalty.

23 Sec. 2. Section 83.15, subsections 1 and 4, Code 1983,  
24 are amended by striking the subsections.

25 EXPLANATION

26 This bill is one alternative offered by the department  
27 of soil conservation to revise the procedures for the  
28 assessment of penalties under the coal mining statute. This  
29 bill provides that a civil penalty shall be assessed if a  
30 violation results in cessation order. The penalty would be  
31 judicially imposed with the department making a recommenda-  
32 tion on the amount. A person is provided with an opportunity  
33 to submit information regarding the amount of the penalty.

34 A person may consent to the recommended penalty by payment.

35 The bill takes effect July 1 following enactment.

LSB 466H 70

dsb/rr/8

HOUSE FILE 531

H-5199

1 Amend House File 531 as follows:

2 1. By striking all after the enacting clause and  
3 inserting in lieu thereof the following:

4 "Section 1. Section 83.14, subsection 4, Code  
5 1983, is amended by striking the subsection and  
6 inserting in lieu thereof the following:

7 4. A permittee may request in writing a hearing,  
8 to be conducted as a contested case and not as an  
9 appeal, to contest a notice or order issued pursuant  
10 to this section or section 83.15 or a penalty  
11 assessment issued pursuant to section 83.15. The  
12 request for a contested case shall be filed with the  
13 department within thirty days of receipt of the notice,  
14 order, or penalty assessment, and shall otherwise  
15 conform to department rules.

16 The contested case hearing shall be scheduled  
17 within thirty days of receipt by the department of  
18 the request for a contested case hearing. If the  
19 decision in the contested case is to revoke the permit,  
20 the permittee shall be given a specific period to  
21 complete reclamation, or the attorney general shall  
22 be requested to institute bond forfeiture proceedings.

23 Sec. 2. Section 83.14, subsection 8, Code 1983,  
24 is amended to read as follows:

25 8. At the request of the department, the attorney  
26 general shall institute any legal proceedings,  
27 including an action for an injunction or a temporary  
28 injunction necessary to enforce the penalty provisions  
29 of this chapter or to obtain compliance with this  
30 chapter. Injunctive relief may be requested to enforce  
31 a cessation order issued by the director pending a  
32 hearing pursuant to subsection 4.

33 Sec. 3. Section 83.15, Code 1983, is amended by  
34 adding the following new subsections:

35 NEW SUBSECTION. A person who violates a permit  
36 condition, a provision of this chapter, or a rule  
37 or order issued under this chapter shall be subject  
38 to a civil penalty not to exceed five thousand dollars  
39 per day for each day of violation. If a violation  
40 results in the issuance of a cessation order, a civil  
41 penalty shall be imposed. The penalty shall not  
42 exceed five thousand dollars for each day of violation.

43 In determining the amount of the penalty,  
44 consideration shall be given to the operator's history  
45 of previous violations at the particular mining  
46 operation, the seriousness of the violation, including  
47 any irreparable harm to the environment and any hazard  
48 to the health or safety of the public, whether the  
49 operator was negligent, and the demonstrated good  
50 faith of the operator charged in attempting to achieve

1 rapid compliance after notification of the violation.  
2 An operator who fails to correct a violation for  
3 which a notice or order has been issued within the  
4 period permitted for its correction shall be required  
5 to pay a civil penalty of not less than seven hundred  
6 fifty dollars for each day during which the failure  
7 or violations continue.

8 NEW SUBSECTION. Where a notice or order has been  
9 issued, the department may assess a recommended penalty  
10 in accordance with a schedule established by rule.  
11 The person to whom the notice or order was issued  
12 may submit written information within fifteen days  
13 of the notice or order to be considered by the  
14 department. The department shall serve the assessment  
15 by certified mail return receipt requested within  
16 thirty days of issuance of the notice or order. The  
17 department may reassess any penalty if necessary to  
18 consider facts not reasonably available on the date  
19 of issuance of the assessment and may provide an  
20 informal conference to review the recommended penalty.  
21 A person may consent to a penalty assessment by paying  
22 the penalty without resort to judicial proceedings.

23 If any violation results in the issuance of a  
24 cessation order pursuant to section 83.14 the  
25 department shall assess a penalty.

26 Any proposed schedule shall be submitted to the  
27 senate and the house natural resources committees  
28 not later than seven days after the convening of the  
29 next regular session of the general assembly and may  
30 become effective after the seventieth calendar day  
31 of the session unless disapproved or amended by  
32 concurrent resolution of the general assembly.

33 NEW SUBSECTION. A contested case may be requested  
34 pursuant to section 83.14, subsection 4 to review  
35 a notice, order, or penalty assessment. A person  
36 to whom a penalty assessment has been issued may  
37 request a contested case hearing solely for review  
38 of the amount of the penalty. A penalty assessment  
39 shall be final if a request for review is not made  
40 in a timely manner.

41 NEW SUBSECTION. Judicial review of any action  
42 of the department shall be in accordance with the  
43 provisions of chapter 17A. Judicial review of a  
44 penalty assessment shall not be permitted unless the  
45 petitioner has posted a bond equal to the amount of  
46 the assessed penalty in the district court or has  
47 placed the proposed amount in an escrow fund approved  
48 by the department.

49 NEW SUBSECTION. If a violation results in a  
50 cessation order pursuant to section 83.14, the attorney

1 general shall, at the request of the department,  
2 institute a civil action in district court for  
3 injunctive relief.

4 Notwithstanding section 17A.20, an appeal bond  
5 shall be required for an appeal of a judgment assessing  
6 a civil penalty.

7 Sec. 4. Section 83.15, subsections 1 and 4, Code  
8 1983, are amended by striking the subsections."

HOUSE FILE 531

AN ACT  
TO REVISE THE PROCEDURES FOR THE ASSESSMENT OF PENALTIES  
UNDER THE LAWS REGULATING COAL MINING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 83.15, Code 1983, is amended by adding the following new subsections:

NEW SUBSECTION. A person who violates a permit condition, any provision of this chapter or a rule or order issued under this chapter shall be subject to a civil penalty not to exceed five thousand dollars per day for each day of violation. If any violation results in the issuance of a cessation order, a civil penalty shall be imposed. Such penalty shall not exceed five thousand dollars for each day of violation.

In determining the amount of the penalty, consideration shall be given to the operator's history of previous violations at the particular mining operation, the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public, whether the operator was negligent, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of the violation.

An operator who fails to correct a violation for which a notice or order has been issued within the period permitted for its correction shall be required to pay a civil penalty of not less than seven hundred fifty dollars for each day during which the failure or violations continue.

NEW SUBSECTION. Where a notice or order has been issued, the department may assess a recommended penalty in accordance with a schedule established by rule. The person to whom the notice or order was issued may submit written information within fifteen days of the notice or order to be considered by the department. The department shall serve the assessment by certified mail return receipt requested within thirty days of issuance of the notice or order. The department may re-assess any penalty if necessary to consider facts not reasonably available on the date of issuance of the assessment and may provide an informal conference to review the recommended penalty. A person may consent to a penalty assessment by paying the penalty without resort to judicial proceedings.

NEW SUBSECTION. Judicial review of any action of the department shall be in accordance with the provisions of chapter 17A.

NEW SUBSECTION. If a person violates a permit condition or violates a provision of this chapter, or a rule, or order issued under this chapter, the attorney general shall, at the request of the department, institute a civil action in the district court for injunctive relief or for the assessment of a civil penalty as determined by the court. If any violations result in the issuance of a cessation order under section 83.14, the department shall request the attorney general to institute a civil action in the district court for the assessment of a civil penalty. Injunctive relief to prevent or abate any violation of this chapter, permit condition, rule, or order issued under this chapter shall be available upon proof of the violation. A final order of the department is judicially enforceable and is not subject to collateral attack in any judicial proceeding if opportunity for hearing and judicial review were available to the person.

An appeal bond shall be required for any appeal of a judgment assessing a civil penalty.

Sec. 2. Section 83.15, subsections 1 and 4, Code 1983,  
are amended by striking the subsections.

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DONALD D. AVENSON  
Speaker of the House

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ROBERT T. ANDERSON  
President of the Senate

I hereby certify that this bill originated in the House and  
is known as House File 531, Seventieth General Assembly.

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JOSEPH O'HERN  
Chief Clerk of the House

Approved April 30, 1984

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TERRY E. BRANSTAD  
Governor