

NATURAL RESOURCES: Tieden, Chair: Hester and Re

MAR 15 1985

Amended House 4/10/85 (p. 1305)

Place On Calendar

HOUSE FILE 626

BY COMMITTEE ON NATURAL RESOURCES AND OUTDOOR RECREATION

(Formerly House Study Bill 343)

Passed House, Date 3-25-85 (p. 1035) Passed Senate, Date 4-17-85 (p. 1462)

Vote: Ayes 96 Nays 0 Vote: Ayes 42 Nays 1

Approved May 16, 1985

Referred House 4-26-85 (p. 1938)

74-0

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:

SENATE AMENDMENT TO HOUSE FILE 626

H-3919

1 Amend House File 626 as passed by the House as
2 follows:

3 1. Page 1, by inserting after line 15 the
4 following:

5 "Sec. 2. Section 83.14, Code 1985, is amended by
6 adding the following new subsection:

7 NEW SUBSECTION. 9. When on the basis of an
8 inspection, or other information available to the
9 department, the director has reasonable cause to
10 believe that the operator is unable to complete
11 reclamation of all or a portion of the permit area as
12 required by law, the director shall issue an order to
13 the operator to show cause as to why all or a portion
14 of the performance bond required by section 83.10
15 should not be revoked."

16 2. By striking page 3, line 34 through page 4,
17 line 6.

H-3919 FILED APRIL 19, 1985

RECEIVED FROM THE SENATE

House concurred 4/26/85 (p. 1938)

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1 Section 1. Section 83.10, Code 1985, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 6. Notwithstanding sections 453.7, sub-
4 section 2, and 666.3, the interest or earnings on investments
5 or time deposits of the proceeds of a performance bond
6 forfeited to the department, cash deposited under subsection
7 2, any funds provided for the abandoned mine reclamation
8 program under section 83.21 and any civil penalties collected
9 pursuant to sections 83.14 and 83.15 shall be credited the
10 payment of costs and administrative expenses associated with
11 the reclamation, restoration or abatement activities of the
12 department. The department may expend funds credited to it
13 under this subsection to conduct reclamation activities on any
14 areas disturbed by coal mining not subject to a presently
15 valid permit to conduct surface mining.

16 Sec. 2. Section 83.14, subsection 4, Code 1985, is amended
17 by striking the subsection and inserting in lieu thereof the
18 following:

19 4. A permittee may request in writing an appeal to the
20 committee of a decision made in a hearing under subsection 3
21 within thirty days of the decision. The committee shall
22 review the record made in the contested case hearing, and may
23 hear additional evidence upon a showing of good cause for
24 failure to present the evidence in the hearing, or if evidence
25 concerning events occurring after the hearing is deemed
26 relevant to the proceeding. However, the committee shall not
27 review a decision in a proceeding if the department seeks to
28 collect a civil penalty pursuant to section 83.15, and those
29 decisions are final agency actions subject to direct judicial
30 review as provided in chapter 17A.

31 The contested case hearing shall be scheduled within thirty
32 days of receipt of the request by the department. If the
33 decision in the contested case is to revoke the permit, the
34 permittee shall be given a specific period to complete
35 reclamation, or the attorney general shall be requested to

1 institute bond forfeiture proceedings.

2 Sec. 3. Section 83.14, subsection 8, Code 1985, is amended
3 to read as follows:

4 8. At the request of the department, the attorney general
5 shall institute any legal proceedings, including an action for
6 an injunction or a temporary injunction necessary to enforce
7 the penalty provisions of this chapter or to obtain compliance
8 with this chapter. Injunctive relief may be requested to
9 enforce a cessation order issued by the director pending a
10 hearing pursuant to subsection 4.

11 Sec. 4. Section 83.15, subsections 1, 2, 3 and 4, Code
12 1985, are amended by striking the subsections and inserting in
13 lieu thereof the following:

14 1. A person who violates a permit condition, a provision
15 of this chapter, or a rule or order issued under this chapter
16 is subject to a civil penalty not to exceed five thousand
17 dollars per day for each day of violation. If a violation
18 results in the issuance of a cessation order, a civil penalty
19 shall be imposed. The penalty shall not exceed five thousand
20 dollars for each day of violation.

21 In determining the amount of the penalty, consideration
22 shall be given to the operator's history of previous viola-
23 tions at the particular mining operation, the seriousness of
24 the violation, including any irreparable harm to the en-
25 vironment and any hazard to the health or safety of the
26 public, whether the operator was negligent, and the
27 demonstrated good faith of the operator charged in attempting
28 to achieve rapid compliance after notification of the
29 violation.

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

35 2. If a notice or order has been issued, the department

1 may assess a recommended penalty in accordance with a schedule
2 established by rule. The person to whom the notice or order
3 was issued may submit written information within fifteen days
4 of the notice or order to be considered by the department.
5 The department shall serve the assessment by certified mail,
6 return receipt requested, within thirty days of issuance of
7 the notice or order. The department may reassess any penalty
8 if necessary to consider facts not reasonably available on the
9 date of issuance of the assessment. A person may consent to a
10 penalty assessment by paying the penalty without resort to
11 judicial proceedings.

12 If a violation results in the issuance of a cessation order
13 pursuant to section 83.14 the department shall assess a
14 penalty.

15 3. A contested case hearing may be requested pursuant to
16 section 83.14, subsection 4, to review a notice, order, or
17 penalty assessment. A person to whom a penalty assessment has
18 been issued may request a contested case hearing solely for
19 review of the amount of the penalty. A penalty assessment is
20 final if a request for review is not made in a timely manner.

21 4. Judicial review of any action of the department shall
22 be in accordance with chapter 17A. Judicial review of a
23 penalty assessment shall not be permitted unless the
24 petitioner has posted a bond equal to the amount of the
25 assessed penalty in the district court or has placed the
26 proposed amount in an interest bearing escrow fund approved by
27 the department.

28 5. If a violation results in a cessation order pursuant to
29 section 83.14, the attorney general, at the request of the
30 department, shall institute a civil action in district court
31 for injunctive relief.

32 Notwithstanding section 17A.20, an appeal bond shall be re-
33 quired for an appeal of a judgment assessing a civil penalty.

34 6. When on the basis of an inspection, or other in-
35 formation available to the department, the director has

1 reasonable cause to believe that the operator is unable to
2 complete reclamation of all or a portion of the permit area as
3 required by law, the director shall issue an order to the
4 operator to show cause as to why all or a portion of the
5 performance bond required by section 83.10 should not be
6 revoked.

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EXPLANATION

8 This bill is offered by the department of soil conservation
9 to revise the procedures for the assessment of penalties under
10 the coal mining statute. This bill provides that a civil
11 penalty shall be assessed and imposed by the department if a
12 violation results in a cessation order. The department may
13 also assess violations directly against operators for
14 violations. Prior to any judicial review of a penalty amount,
15 the operator shall be required to put the penalty in escrow
16 with the department. The department may initiate
17 administrative proceedings for the revocation of the
18 performance bond.

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1 Amend House File 626 as passed by the House as
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9 department, the director has reasonable cause to
10 believe that the operator is unable to complete
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13 the operator to show cause as to why all or a portion
14 of the performance bond required by section 83.10
15 should not be revoked."
16 2. By striking page 3, line 34 through page 4,
17 line 6.

S-3695 Filed April 10, 1985

By COM. ON NATURAL RESOURCES

Adopted 4/17/85 (p. 1462)

NSB 343

*New
HF 626*

NATURAL RESOURCES AND
OUTDOOR RECREATION

HOUSE FILE 626

BY (PROPOSED COMMITTEE ON NATURAL
RESOURCES AND OUTDOOR
RECREATION BILL)

Study Bill 343

Natural Resources and Outdoor Recreation: Paulin, Chair; Cooper and Grandia.

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

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:

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1 Section 1. Section 83.10, Code 1985, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 6. Notwithstanding sections 453.7, sub-
4 section 2, and 666.3, the interest or earnings on investments
5 or time deposits of the proceeds of a performance bond
6 forfeited to the department, cash deposited under subsection
7 2, any funds provided for the abandoned mine reclamation
8 program under section 83.21 and any civil penalties collected
9 pursuant to sections 83.14 and 83.15 shall be credited the
10 payment of costs and administrative expenses associated with
11 the reclamation, restoration or abatement activities of the
12 department. The department may expend funds credited to it
13 under this subsection to conduct reclamation activities on any
14 areas disturbed by coal mining not subject to a presently
15 valid permit to conduct surface mining.

16 Sec. 2. Section 83.14, subsection 4, Code 1985, is amended
17 by striking the subsection and inserting in lieu thereof the
18 following:

19 4. A permittee may request in writing an appeal to the
20 committee of a decision made in a hearing under subsection 3
21 within thirty days of the decision. The committee shall
22 review the record made in the contested case hearing, and may
23 hear additional evidence upon a showing of good cause for
24 failure to present the evidence in the hearing, or if evidence
25 concerning events occurring after the hearing is deemed
26 relevant to the proceeding. However, the committee shall not
27 review a decision in a proceeding if the department seeks to
28 collect a civil penalty pursuant to section 83.15, and those
29 decisions are final agency actions subject to direct judicial
30 review as provided in chapter 17A.

31 The contested case hearing shall be scheduled within thirty
32 days of receipt of the request by the department. If the
33 decision in the contested case is to revoke the permit, the
34 permittee shall be given a specific period to complete
35 reclamation, or the attorney general shall be requested to

1 institute bond forfeiture proceedings.

2 Sec. 3. Section 83.145, subsection 8, Code 1985, is
3 amended to read as follows:

4 8. At the request of the department, the attorney general
5 shall institute any legal proceedings, including an action for
6 an injunction or a temporary injunction necessary to enforce
7 the penalty provisions of this chapter or to obtain compliance
8 with this chapter. Injunctive relief may be requested to
9 enforce a cessation order issued by the director pending a
10 hearing pursuant to subsection 4.

11 Sec. 4. Section 83.15, subsections 1, 2, 3 and 4, Code
12 1985, are amended by striking the subsections and inserting in
13 lieu thereof the following:

14 1. A person who violates a permit condition, a provision
15 of this chapter, or a rule or order issued under this chapter
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17 dollars per day for each day of violation. If a violation
18 results in the issuance of a cessation order, a civil penalty
19 shall be imposed. The penalty shall not exceed five thousand
20 dollars for each day of violation.

21 In determining the amount of the penalty, consideration
22 shall be given to the operator's history of previous viola-
23 tions at the particular mining operation, the seriousness of
24 the violation, including any irreparable harm to the en-
25 vironment and any hazard to the health or safety of the
26 public, whether the operator was negligent, and the
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28 to achieve rapid compliance after notification of the
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32 for its correction shall be required to pay a civil penalty of
33 not less than seven hundred fifty dollars for each day during
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35 2. If a notice or order has been issued, the department

1 may assess a recommended penalty in accordance with a schedule
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3 was issued may submit written information within fifteen days
4 of the notice or order to be considered by the department.
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6 return receipt requested, within thirty days of issuance of
7 the notice or order. The department may reassess any penalty
8 if necessary to consider facts not reasonably available on the
9 date of issuance of the assessment. A person may consent to a
10 penalty assessment by paying the penalty without resort to
11 judicial proceedings.

12 If a violation results in the issuance of a cessation order
13 pursuant to section 83.14 the department shall assess a
14 penalty.

15 3. A contested case hearing may be requested pursuant to
16 section 83.14, subsection 4, to review a notice, order, or
17 penalty assessment. A person to whom a penalty assessment has
18 been issued may request a contested case hearing solely for
19 review of the amount of the penalty. A penalty assessment is
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21 4. Judicial review of any action of the department shall
22 be in accordance with chapter 17A. Judicial review of a
23 penalty assessment shall not be permitted unless the
24 petitioner has posted a bond equal to the amount of the
25 assessed penalty in the district court or has placed the
26 proposed amount in an interest bearing escrow fund approved by
27 the department.

28 5. If a violation results in a cessation order pursuant to
29 section 83.14, the attorney general, at the request of the
30 department, shall institute a civil action in district court
31 for injunctive relief.

32 Notwithstanding section 17A.20, an appeal bond shall be re-
33 quired for an appeal of a judgment assessing a civil penalty.

34 EXPLANATION

35 This bill is offered by the department of soil conservation

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HOUSE FILE 626

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 83.10, Code 1985, is amended by adding the following new subsection:

NEW SUBSECTION. 6. Notwithstanding sections 453.7, subsection 2, and 666.3, the interest or earnings on investments or time deposits of the proceeds of a performance bond forfeited to the department, cash deposited under subsection 2, any funds provided for the abandoned mine reclamation program under section 83.21 and any civil penalties collected pursuant to sections 83.14 and 83.15 shall be credited the payment of costs and administrative expenses associated with the reclamation, restoration or abatement activities of the department. The department may expend funds credited to it under this subsection to conduct reclamation activities on any areas disturbed by coal mining not subject to a presently valid permit to conduct surface mining.

Sec. 2. Section 83.14, Code 1985, is amended by adding the following new subsection:

NEW SUBSECTION. 9. When on the basis of an inspection, or other information available to the department, the director has reasonable cause to believe that the operator is unable to complete reclamation of all or a portion of the permit area as required by law, the director shall issue an order to the operator to show cause as to why all or a portion of the performance bond required by section 83.10 should not be revoked.

Sec. 3. Section 83.14, subsection 4, Code 1985, is amended by striking the subsection and inserting in lieu thereof the following:

4. A permittee may request in writing an appeal to the committee of a decision made in a hearing under subsection 3 within thirty days of the decision. The committee shall review the record made in the contested case hearing, and may hear additional evidence upon a showing of good cause for failure to present the evidence in the hearing, or if evidence concerning events occurring after the hearing is deemed relevant to the proceeding. However, the committee shall not review a decision in a proceeding if the department seeks to collect a civil penalty pursuant to section 83.15, and those decisions are final agency actions subject to direct judicial review as provided in chapter 17A.

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

Sec. 4. Section 83.14, subsection 8, Code 1985, is amended to read as follows:

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

Sec. 5. Section 83.15, subsections 1, 2, 3 and 4, Code 1985, are amended by striking the subsections and inserting in lieu thereof the following:

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

2. If 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 reassess any penalty if necessary to consider facts not reasonably available on the date of issuance of the assessment. A person may consent to a penalty assessment by paying the penalty without resort to judicial proceedings.

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

3. A contested case hearing may be requested pursuant to section 83.14, subsection 4, to review a notice, order, or penalty assessment. A person to whom a penalty assessment has been issued may request a contested case hearing solely for review of the amount of the penalty. A penalty assessment is final if a request for review is not made in a timely manner.

4. Judicial review of any action of the department shall be in accordance with chapter 17A. Judicial review of a

penalty assessment shall not be permitted unless the petitioner has posted a bond equal to the amount of the assessed penalty in the district court or has placed the proposed amount in an interest bearing escrow fund approved by the department.

5. If a violation results in a cessation order pursuant to section 83.14, the attorney general, at the request of the department, shall institute a civil action in district court for injunctive relief.

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

DONALD D. AVENSON
Speaker of the House

ROBERT T. ANDERSON
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 626, Seventy-first General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved May 16, 1985

TERRY E. BRANSTAD
Governor