

Jan Energy 3/6

FEB 14 1990

HOUSE FILE 2412
BY OLLIE, STUELAND, BEATTY,
JOHNSON, ROSENBERG, EDDIE,
TRENT, PLASIER, and OSTERBERG

ENERGY AND ENVIRONMENTAL PROTECTION
L. Sac. 2/16 (p. 418)

Passed House, Date 2/22/90 (p. 549) Passed Senate, Date 4/3/90 (p. 1476)
Vote: Ayes 96 Nays 0 Vote: Ayes 33 Nays 17

Approved April 27, 1990

Motion to reconsider (p. 546) w/2 3/5

Motion to Reconsider (p. 1486) prevailed 4/5 (p. 1592)

Repassed House per 6163 4/6/90 (p. 2191)
90-0

A BILL FOR

1 An Act providing for the enactment of municipal infractions
2 relating to the environment and providing penalties.

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

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HF 2412

5352 amend sel

1 Section 1. Section 364.22, subsection 1, Code Supplement
2 1989, is amended to read as follows:

3 1. A municipal infraction is a civil offense punishable by
4 a civil penalty of not more than one hundred dollars for each
5 violation or if the infraction is a repeat offense, a civil
6 penalty not to exceed two hundred dollars for each repeat
7 offense. However, if the civil offense is an environmental
8 violation, the civil penalty shall not exceed two thousand
9 five hundred dollars for each violation.

10 Sec. 2. Section 364.22, subsection 5, paragraph a, Code
11 Supplement 1989, is amended to read as follows:

12 a. The matter shall be tried before a magistrate, or a
13 district associate judge, or a district judge in district
14 court if the total amount of civil penalties does not exceed
15 two thousand dollars in the same manner as a small claim. The
16 matter shall only be tried before a judge in district court if
17 the total amount of civil penalties assessed exceeds two
18 thousand dollars.

19 Sec. 3. Section 364.22, subsection 9, paragraph e,
20 unnumbered paragraph 3, Code Supplement 1989, is amended to
21 read as follows:

22 The A magistrate or district associate judge shall have
23 jurisdiction to assess or enter judgment for costs of
24 abatement or correction in an amount not to exceed the
25 jurisdictional amount for a money judgment in a civil action
26 pursuant to section 631.1, subsection 1, for magistrates and
27 section 602.6306, subsection 2, for district associate judges.
28 If the city seeks abatement or correction costs in excess of
29 those amounts, and the matter is not before a judge in
30 district court, the case shall be referred to the district
31 court for hearing and entry of an appropriate order. The
32 procedure for hearing in the district court shall be the same
33 procedure as that for a small claims appeal pursuant to
34 section 631.13.

35 Sec. 4. Section 364.22, subsection 10, Code Supplement

1 1989, is amended to read as follows:

2 10. The defendant or the city may file a motion for a new
3 trial or may appeal the decision of the a magistrate, or
4 district associate judge, or a district judge to the district
5 court. The procedure on appeal shall be the same as for a
6 small claim pursuant to section 631.13. A factual
7 determination made by the trial court, supported by
8 substantial evidence as shown in the record, is binding for
9 purposes of appeal relating to the violation at issue, but
10 shall not be admissible or binding as to any future violation
11 for the same or similar ordinance provision by the same
12 defendant.

13 EXPLANATION

14 This bill provides that a municipal infraction which is an
15 environmental violation is punishable by a maximum civil
16 penalty of \$2,500 for each violation. The bill provides for
17 enforcement of the infraction by a magistrate, district
18 associate judge, or district judge.

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SENATE AMENDMENT TO HOUSE FILE 2412

H-6163

1 Amend House File 2412, as passed by the House, as
2 follows:

3 1. Page 1, by striking lines 7 through 9, and
4 inserting the following: "offense. However,
5 notwithstanding section 364.3, a municipal infraction
6 arising from noncompliance with a pretreatment
7 standard or requirement, referred to in 40 C.F.R. §
8 403.8, by an industrial user may be punishable by a
9 civil penalty of not more than one thousand dollars
10 for each day a violation exists or continues.

11 A city may classify a municipal infraction, other
12 than a violation arising from noncompliance with a
13 pretreatment standard or requirement, as an
14 environmental violation if the infraction is a
15 violation of chapter 455B or a violation of a standard
16 established by the city in consultation with the
17 department of natural resources, or both. The
18 discharge of airborne residue from grain, created by
19 the handling, drying, or storing of grain by a person,
20 shall not be subject to an ordinance, the violation of
21 which is classified as an environmental violation,
22 unless the person is engaged in industrial production
23 or manufacturing of grain products. The discharge of
24 airborne residue from grain, created by the handling,
25 drying, or storing of grain by a person engaged in
26 industrial production or manufacturing of grain
27 products, shall not be subject to an ordinance, the
28 violation of which is classified as an environmental
29 violation, if the discharge occurs from September 15
30 to January 15. A municipal infraction which is
31 classified an environmental violation is punishable by
32 a civil penalty of not more than one thousand dollars
33 for each occurrence. A person committing an
34 environmental violation is not subject to a civil
35 penalty, if all of the following conditions are
36 satisfied:

37 a. The violation results solely from the person
38 conducting an initial start-up, cleaning, repairing,
39 performing scheduled maintenance, testing, or
40 conducting a shutdown, of either equipment causing the
41 violation or the equipment designed to reduce or
42 eliminate the violation.

43 b. The person notifies the city of the violation
44 within twenty-four hours from the time that the
45 violation begins.

46 c. The violation does not continue in existence
47 for more than eight hours.

48 A city shall not enforce this section against a
49 person committing an environmental violation, until
50 the city offers to participate in informal

H-6163

Page 2

1 negotiations with the person. If the person accepts
2 the offer, the city and the person shall participate
3 in good faith negotiations to resolve issues alleged
4 to be the basis for the violation."

5 2. Page 2, by inserting after line 12, the
6 following:

7 "Sec. ____ . Section 364.22, Code Supplement 1989,
8 is amended by adding the following new subsection:

9 NEW SUBSECTION. 13. An action brought pursuant to
10 this section for a municipal infraction which is an
11 environmental violation does not preclude, and is in
12 addition to, any other enforcement action which may be
13 brought pursuant to chapter 455B, 455D, or 455E."

14 3. Page 2, by inserting after line 12 the
15 following:

16 "Sec. ____ .

17 If a conflict exists between a provision of this
18 Act, as enacted, and 1990 Iowa Acts, Senate File 2393,
19 as enacted, the provision contained in this Act shall
20 prevail."

21 4. By renumbering, relettering, or redesignating
22 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-6163 FILED APRIL 6, 1990

CONCURRED (p. 2191)

HOUSE FILE 2412

S-5957

Amend amendment, S-5774, to House File 2412, as passed by the House, as follows:

1. Page 1, by striking lines 1 through 7 and inserting the following:

"Amend House File 2412, as passed by the House, as follows:

. Page 1, by striking lines 7 through 9, and inserting the following: "offense. However, notwithstanding section 364.3, a municipal infraction which arises from noncompliance with a pretreatment standard or requirement, referred to in 40 C.F.R. §".

2. Page 1, by striking lines 10 through 24, and inserting the following: "more than one thousand dollars for each day a violation exists or continues.

A city may classify a municipal infraction, other than a violation arising from noncompliance with a pretreatment standard or requirement, as an environmental violation if the infraction is a violation of chapter 455B or a violation of a standard established by the city in consultation with the department of natural resources, or both. An ordinance, the violation of which is classified as an environmental violation, shall not exceed the most stringent standard or requirement contained in a statute regulating conduct which is the subject of the environmental violation. The environmental violation shall not be based on a departmental rule. The environmental violation shall not regulate the discharge of residue from grain created by handling or drying of grain from September 15 to January 15. A municipal infraction which is classified an environmental violation is punishable by a civil penalty of not more than one thousand dollars for each occurrence. A person committing an environmental violation is not subject to a civil penalty, if all of the following conditions are satisfied:"

By PAUL PATE

S-5957 FILED APRIL 6, 1990

LOST (p. 1635)

HOUSE FILE 2412

S-5925

1 Amend the amendment, S-5774, to House File 2412, as
2 passed by the House, as follows:

3 1. Page 1, line 18, by inserting after the word
4 "both." the following: "The discharge of airborne
5 residue from grain, created by the handling, drying,
6 or storing of grain by a person, shall not be subject
7 to an ordinance, the violation of which is classified
8 as an environmental violation, unless the person is
9 engaged in industrial production or manufacturing of
10 grain products. The discharge of airborne residue
11 from grain, created by the handling, drying, or
12 storing of grain by a person engaged in industrial
13 production or manufacturing of grain products, shall
14 not be subject to an ordinance, the violation of which
15 is classified as an environmental violation, if the
16 discharge occurs from September 15 to January 15."

By KENNETH SCOTT
EMIL J. HUSAK
BERL E. PRIEBE

LEONARD L. BOSWELL
MIKE CONNOLLY

S-5925 FILED APRIL 5, 1990

Adopted 4/6 (p. 1033)

HOUSE FILE 2412

S-5897

1 Amend the amendment, S-5774, to House File 2412, as
2 passed by the House, as follows:

3 1. Page 1, line 11, by inserting after the word
4 "continues." the following: "An ordinance, the
5 violation of which is punishable as a municipal
6 infraction, which is based on a pretreatment standard
7 or requirement shall not exceed the most stringent
8 pretreatment standard or requirement referred to in 40
9 C.F.R. § 403.8."

10 2. Page 1, line 18, by inserting after the word
11 "both." the following: "An ordinance, the violation
12 of which is classified as an environmental violation,
13 shall not exceed the most stringent standard or
14 requirement contained in a statute regulating conduct
15 which is the subject of the environmental violation.
16 The environmental violation shall not be based on a
17 departmental rule. The environmental violation shall
18 not regulate the discharge of residue from grain
19 created by handling or processing grain from September
20 1 to December 30."

By KENNETH SCOTT
BERL E. PRIEBE
EMIL J. HUSAK
JOHN E. SOORHOLTZ

RICHARD VANDE HOEF
PAUL D. PATE
JACK RIFE

S-5897 FILED APRIL 4, 1990

Placed o/c 4/6 (p. 1633)

HOUSE FILE 2412

S-5905

1 Amend the amendment, S-5774, to House File 2412, as
2 passed by the House, as follows:

3 1. Page 1, line 18, by inserting after the word
4 "both." the following: "An ordinance, the violation
5 of which is classified as an environmental violation,
6 shall not exceed the most stringent standard or
7 requirement contained in a statute regulating conduct
8 which is the subject of the environmental violation.
9 The environmental violation shall not be based on a
10 departmental rule. The environmental violation shall
11 not regulate the discharge of residue from grain
12 created by handling or drying of grain from September
13 1 to December 30."

By KENNETH SCOTT
BERL E. PRIEBE
EMIL J. HUSAK

PAUL D. PATE
MIKE CONNOLLY
JOHN SOORHOLTZ

S-5905 FILED APRIL 4, 1990

Placed o/c 4/6 (p. 1633)

HOUSE FILE 2412

S-5862

1 Amend the amendment, S-5774, to House File 2412, as
2 passed by the House, as follows:

3 1. Page 1, line 11, by inserting after the word
4 "continues." the following: "A municipal infraction
5 based on a pretreatment standard or requirement shall
6 not regulate the discharge of residue from grain
7 created by processing grain from September 1 to
8 December 30."

9 2. Page 1, line 18, by inserting after the word
10 "both." the following: "However, an environmental
11 violation shall not regulate the discharge of residue
12 from grain created by processing grain from September
13 1 to December 30."

By KENNETH J. SCOTT
BERL E. PRIEBE
EMIL J. HUSAK

JOHN SOORHOLTZ
RICHARD VANDE HOEF
JACK RIFE

S-5862 FILED APRIL 3, 1990

w/d 4/5 (p. 1592)

HOUSE FILE 2412

S-5842

1. Amend the amendment, S-5774, to House File 2412, as passed by the House, as follows:

1. Page 1, by striking lines 8 and 9, and inserting the following: "403.8, by an industrial user may be punishable by a civil penalty of not".

2. Page 1, by inserting after line 42 the following:

"____. Page 2, by inserting after line 12 the following:

"Sec. ____.

If a conflict exists between a provision of this Act, as enacted, and 1990 Iowa Acts, Senate File 2393, as enacted, the provision contained in this Act shall prevail.""

3. By renumbering as necessary.

By MIKE CONNOLLY

S-5842 FILED APRIL 2, 1990

Adopted 4/3 (p. 1476)

HOUSE FILE 2412

S-5774

1 Amend House File 2412, as passed by the House, as
2 follows:

3 1. Page 1, by striking lines 7 through 9, and
4 inserting the following: "offense. However,
5 notwithstanding section 364.3, a municipal infraction
6 arising from noncompliance with a pretreatment
7 standard or requirement, referred to in 40 C.F.R. §
8 403.8, by a person engaged in industrial production or
9 manufacturing is punishable by a civil penalty of not
10 more than one thousand dollars for each day a
11 violation exists or continues.

12 A city may classify a municipal infraction, other
13 than a violation arising from noncompliance with a
14 pretreatment standard or requirement, as an
15 environmental violation if the infraction is a
16 violation of chapter 455B or a violation of a standard
17 established by the city in consultation with the
18 department of natural resources, or both. A municipal
19 infraction which is classified an environmental
20 violation is punishable by a civil penalty of not more
21 than one thousand dollars for each occurrence. A
22 person committing an environmental violation is not
23 subject to a civil penalty, if all of the following
24 conditions are satisfied:

25 a. The violation results solely from the person
26 conducting an initial start-up, cleaning, repairing,
27 performing scheduled maintenance, testing, or
28 conducting a shutdown, of either equipment causing the
29 violation or the equipment designed to reduce or
30 eliminate the violation.

31 b. The person notifies the city of the violation
32 within twenty-four hours from the time that the
33 violation begins.

34 c. The violation does not continue in existence
35 for more than eight hours.

36 A city shall not enforce this section against a
37 person committing an environmental violation, until
38 the city offers to participate in informal
39 negotiations with the person. If the person accepts
40 the offer, the city and the person shall participate
41 in good faith negotiations to resolve issues alleged
42 to be the basis for the violation."

By MIKE CONNOLLY

S-5774 FILED MARCH 29, 1990

*Adopted as amended by 5842 4/3 (p. 1476)**Motion to reconsider 4/4 (p. 1550)**Prevailed 4/5 (p. 1592)**Adopted as further amended by 5925 4/6 (p. 1633)*

HOUSE FILE 2412

S-5439

1 Amend House File 2412, as passed by the House, as
2 follows:

3 1. Page 1, by striking lines 8 and 9, and
4 inserting the following: "violation, the civil
5 penalty shall not exceed one thousand dollars a day
6 for each day the violation exists or continues."

7 2. Page 2, by inserting after line 12, the
8 following:

9 "Sec. ____ . Section 364.22, Code Supplement 1989,
10 is amended by adding the following new subsection:
11 NEW SUBSECTION. 13. An action brought pursuant to
12 this section for a municipal infraction which is an
13 environmental violation does not preclude, and is in
14 addition to, any other enforcement action which may be
15 brought pursuant to chapter 455B, 455D, or 455E."
16 3. Renumber as necessary.

By COMMITTEE ON ENVIRONMENT
AND ENERGY UTILITIES
PAT DELUHERY, Chairperson

S-5439 FILED MARCH 12, 1990

B-adopted, A-w/o 4/3 (p. 1476)

HOUSE FILE 2412

S-5478

1 Amend House File 2412, as passed by the House, as
2 follows:

3 1. Page 1, line 9, by inserting after the word
4 "violation." the following: "An environmental vic-
5 lation is a violation of a provision contained in
6 chapter 455B."

By MIKE CONNOLLY

S-5478 FILED MARCH 13, 1990

Placed o/o 4/3 (p. 1476)

HOUSE FILE 2412

H-5352

1 Amend House File 2412 as follows:
2 1. By striking everything after the enacting
3 clause and inserting the following:
4 "Section 1. Section 364.3, subsection 2, Code
5 1989, is amended to read as follows:
6 2. A city shall not provide a criminal penalty in
7 excess of a one hundred dollar fine or in excess of
8 thirty days imprisonment for the violation of an
9 ordinance, except for a violation of an environmental
10 ordinance. An amount equal to ten percent of all
11 fines collected by cities shall be deposited in the
12 court revenue distribution account established in
13 section 602.8108. However, one hundred percent of all
14 fines collected by a city pursuant to section 321.236,
15 subsection 1, shall be retained by the city. The
16 criminal penalty surcharge required by section 911.2
17 shall be added to a city fine and is not a part of the
18 city's penalty.
19 Sec. 2. Section 364.3, Code 1989, is amended by
20 adding the following new subsection:
21 NEW SUBSECTION. 7. A city shall not provide a
22 criminal penalty in excess of one thousand dollars or
23 one year of imprisonment for the violation of an
24 ordinance which is classified as an environmental
25 ordinance.
26 Sec. 3. NEW SECTION. 364.25 ENVIRONMENTAL
27 ORDINANCE.
28 1. A city may adopt an ordinance as an
29 environmental ordinance to enforce a provision
30 relating to the following:
31 a. Air quality under chapter 455B, division II, or
32 rules adopted by the department of natural resources
33 under that division.
34 b. Water quality under chapter 455B, division III,
35 or rules adopted by the department of natural
36 resources under that division.
37 c. The abatement, control, or prevention of air
38 pollution, water pollution, or odors injurious to
39 health or offensive to the senses.
40 2. A violation of an environmental ordinance is
41 deemed a public nuisance. The city may initiate a
42 civil action against a person violating the ordinance.
43 A court, in addition to imposing a criminal penalty,
44 may order that the nuisance be abated or removed at
45 the expense of the defendant, and, after inquiry into
46 and estimating the sum necessary to defray the
47 expenses of the abatement or removal, the court may
48 issue an order for the abatement or removal."
49 2. Title page, line 1, by striking the words
50 "municipal infractions" and inserting the following:

Page 2
1 "ordinances".

By HIBBARD of Madison

H-5352 FILED FEBRUARY 26, 1990

Filed 2/26/90 (p. 865)

HOUSE FILE 2412

AN ACT

PROVIDING FOR THE ENACTMENT OF MUNICIPAL INFRACTIONS RELATING TO THE ENVIRONMENT AND PROVIDING PENALTIES.

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

Section 1. Section 364.22, subsection 1, Code Supplement 1989, is amended to read as follows:

1. A municipal infraction is a civil offense punishable by a civil penalty of not more than one hundred dollars for each violation or if the infraction is a repeat offense, a civil penalty not to exceed two hundred dollars for each repeat offense. However, notwithstanding section 364.3, a municipal infraction arising from noncompliance with a pretreatment standard or requirement, referred to in 40 C.F.R. § 403.8, by an industrial user may be punishable by a civil penalty of not more than one thousand dollars for each day a violation exists or continues.

A city may classify a municipal infraction, other than a violation arising from noncompliance with a pretreatment standard or requirement, as an environmental violation if the infraction is a violation of chapter 455B or a violation of a standard established by the city in consultation with the department of natural resources, or both. The discharge of airborne residue from grain, created by the handling, drying, or storing of grain by a person, shall not be subject to an ordinance, the violation of which is classified as an environmental violation, unless the person is engaged in industrial production or manufacturing of grain products. The discharge of airborne residue from grain, created by the handling, drying, or storing of grain by a person engaged in industrial production or manufacturing of grain products, shall not be subject to an ordinance, the violation of which

is classified as an environmental violation, if the discharge occurs from September 15 to January 15. A municipal infraction which is classified an environmental violation is punishable by a civil penalty of not more than one thousand dollars for each occurrence. A person committing an environmental violation is not subject to a civil penalty, if all of the following conditions are satisfied:

a. The violation results solely from the person conducting an initial start-up, cleaning, repairing, performing scheduled maintenance, testing, or conducting a shutdown, of either equipment causing the violation or the equipment designed to reduce or eliminate the violation.

b. The person notifies the city of the violation within twenty-four hours from the time that the violation begins.

c. The violation does not continue in existence for more than eight hours.

A city shall not enforce this section against a person committing an environmental violation, until the city offers to participate in informal negotiations with the person. If the person accepts the offer, the city and the person shall participate in good faith negotiations to resolve issues alleged to be the basis for the violation.

Sec. 2. Section 364.22, subsection 5, paragraph a, Code Supplement 1989, is amended to read as follows:

a. The matter shall be tried before a magistrate, or a district associate judge, or a district judge in district court if the total amount of civil penalties does not exceed two thousand dollars in the same manner as a small claim. The matter shall only be tried before a judge in district court if the total amount of civil penalties assessed exceeds two thousand dollars.

Sec. 3. Section 364.22, subsection 9, paragraph e, unnumbered paragraph 3, Code Supplement 1989, is amended to read as follows:

The A magistrate or district associate judge shall have jurisdiction to assess or enter judgment for costs of abatement or correction in an amount not to exceed the jurisdictional amount for a money judgment in a civil action pursuant to section 631.1, subsection 1, for magistrates and section 602.6306, subsection 2, for district associate judges. If the city seeks abatement or correction costs in excess of those amounts, and the matter is not before a judge in district court, the case shall be referred to the district court for hearing and entry of an appropriate order. The procedure for hearing in the district court shall be the same procedure as that for a small claims appeal pursuant to section 631.13.

Sec. 4. Section 364.22, subsection 10, Code Supplement 1989, is amended to read as follows:

10. The defendant or the city may file a motion for a new trial or may appeal the decision of the a magistrate, or district associate judge, or a district judge to the district court. The procedure on appeal shall be the same as for a small claim pursuant to section 631.13. A factual determination made by the trial court, supported by substantial evidence as shown in the record, is binding for purposes of appeal relating to the violation at issue, but shall not be admissible or binding as to any future violation for the same or similar ordinance provision by the same defendant.

Sec. 5. Section 364.22, Code Supplement 1989, is amended by adding the following new subsection:

NEW SUBSECTION. 13. An action brought pursuant to this section for a municipal infraction which is an environmental violation does not preclude, and is in addition to, any other enforcement action which may be brought pursuant to chapter 455B, 455D, or 455E.

Sec. 6.

If a conflict exists between a provision of this Act, as enacted, and 1990 Iowa Acts, Senate File 2393, as enacted, the provision contained in this Act shall prevail.

DONALD D. AVENSON
Speaker of the House

JO ANN ZIMMERMAN
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2412, Seventy-third General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved *April 27*, 1990

TERRY E. BRANSTAD
Governor