

MAR 1 0 2006
Place On Calendar

HOUSE FILE 2744
BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO HSB 736)

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

A BILL FOR

1 An Act precluding certain enforcement actions by the department
2 of natural resources or the attorney general based on
3 detrimental reliance.

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

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HF 2744

1 Section 1. Section 455B.109, Code Supplement 2005, is
2 amended by adding the following new subsection:

3 NEW SUBSECTION. 6. The department is precluded from
4 taking an enforcement action against a person for failing to
5 comply with a requirement if the person has detrimentally
6 relied upon the department's binding explanation of the
7 requirement as provided in section 455B.110.

8 Sec. 2. NEW SECTION. 455B.110 ENFORCEMENT ACTION --
9 PRECLUSION BASED ON DETRIMENTAL RELIANCE.

10 1. As used in this section, unless the context otherwise
11 requires:

12 a. "Department representative" means an official or
13 employee of the department or an agent of the department,
14 including a contractor who holds themselves out as acting on
15 behalf of the department.

16 b. "Enforcement action" means any of the following:

17 (1) For the department, issuing an order, initiating or
18 acting as a party in a contested case proceeding, or rendering
19 a proposed or final decision as provided in chapter 17A, for
20 purposes of imposing, assessing, or collecting a civil penalty
21 under section 455B.109 or 455B.191.

22 (2) For the attorney general, bringing a judicial
23 proceeding, or acting as a party in a judicial proceeding,
24 including a civil or criminal action, to the extent authorized
25 by section 455B.112, 455B.146, 455B.146A, or 455B.191.

26 2. a. The department is precluded from taking an
27 enforcement action to impose, assess, or collect a civil
28 penalty against a person who has detrimentally relied upon a
29 binding explanation by the department which erroneously
30 advises the person how to comply with a requirement of a
31 statute or departmental rule, including by performing or
32 refraining from performing an act.

33 b. The attorney general is precluded from taking an
34 enforcement action to obtain a criminal judgment or impose,
35 assess, or collect a civil penalty against a person who has

1 detrimentally relied upon a binding explanation by the
2 department as provided in paragraph "a".

3 3. The department's explanation may be provided to a
4 person who may have violated this chapter in writing or
5 verbally by a departmental representative. If the
6 department's explanation is provided in writing, it shall be a
7 binding explanation. If the department's explanation is
8 provided verbally, it shall become binding as follows:

9 a. The person must deliver a request for confirmation to
10 the department at an address established by the department for
11 the purpose of receiving requests for confirmation. The
12 person's request for confirmation must be in writing and
13 delivered to the department within twenty-one business days
14 after the department's explanation was verbally provided to
15 the person. The person's request for confirmation must
16 include all of the following:

17 (1) A return address for the department to deliver a
18 response to the person.

19 (2) The explanation sought to be confirmed.

20 (3) The date that the department's explanation was
21 provided.

22 (4) The name of the department representative who provided
23 the explanation.

24 b. The department may deliver a response to the person's
25 return address as provided in the request for confirmation.
26 The department's response shall do one of the following:

27 (1) Confirm that the department's explanation provided
28 verbally to the person is binding. The department may deliver
29 the response to the person at any time.

30 (2) Deny that the department's explanation is binding.
31 The department may include a binding explanation in writing.
32 The department's response must be delivered to the person
33 within thirty days after the person delivers the request for
34 confirmation to the department. If the department fails to
35 deliver a timely response to the person, the explanation

1 sought to be confirmed by the person as provided in the
2 person's request for confirmation shall be the binding
3 explanation.

4 4. The department's explanation, the person's request for
5 confirmation, and the department's response may be transmitted
6 in an electronic format, including but not limited to the
7 internet, and shall be deemed written.

8 5. a. If a binding explanation concerns a requirement
9 subject to a variance as provided in section 455B.143, or
10 otherwise as a waiver or variance as provided in section
11 17A.9A, the binding explanation shall be deemed to be a waiver
12 or variance as provided in those sections.

13 b. If a binding explanation concerns a requirement that is
14 not subject to a variance or waiver as provided in section
15 455B.143 or 17A.9A, the department shall deliver a notice to
16 the person who has been precluded from being subjected to an
17 enforcement action. The notice shall provide that the person
18 may be subject to an enforcement action on or after a future
19 date. The department shall establish a future date which
20 allows the person a reasonable period to comply with the
21 requirement. However, the department shall not nullify a
22 binding explanation if it would result in undue hardship to
23 the person including but not limited to requiring the person
24 to move, demolish, or rebuild a structure which was
25 constructed or expanded in reliance on the department's
26 binding explanation. The department's notice shall inform the
27 person that the person may object to the department's
28 determination that compliance does not result in undue
29 hardship to the person. The person may object to the
30 department's determination by delivering a written request for
31 a hearing to the department. The person shall deliver the
32 request for a hearing within twenty-one business days after
33 the department delivered its notice to the person. The
34 department shall commence a contested case proceeding
35 regarding the issue in the same manner as provided in chapter

1 17A. An interpretation of the issue is not vested in the
2 discretion of the department, and is subject to de novo
3 judicial review in any subsequent review proceeding of the
4 case as provided in section 17A.19.

5 6. The department or attorney general may take an
6 enforcement action against a person regardless of a binding
7 explanation if any of the following applies:

8 a. The person obtains the binding explanation in bad
9 faith, having actual knowledge that the explanation was
10 erroneous.

11 b. The binding explanation concerns a requirement in a
12 statute or departmental rule that has been superseded by a
13 requirement in a statute enacted or rule adopted after the
14 explanation becomes binding.

15 7. Nothing in this section prevents the department from
16 conducting an investigation or issuing a subpoena requiring
17 the attendance of a witness or the production of evidence
18 pertinent to a hearing.

19 Sec. 3. Section 455B.112, Code Supplement 2005, is amended
20 to read as follows:

21 455B.112 ACTIONS BY ATTORNEY GENERAL.

22 1. In addition to the duty to commence legal proceedings
23 at the request of the director or commission under this
24 chapter; chapter 459, subchapters I, II, III, IV, and VI; or
25 chapter 459A, the attorney general may institute civil or
26 criminal proceedings, including an action for injunction, to
27 enforce the provisions of this chapter; chapter 459,
28 subchapters I, II, III, IV, and VI; or chapter 459A, including
29 orders or permits issued or rules adopted under this chapter;
30 chapter 459, subchapters I, II, III, IV, and VI; or chapter
31 459A.

32 2. However, the attorney general is precluded from taking
33 an enforcement action against a person for failing to comply
34 with a requirement if the person has detrimentally relied upon
35 the department's binding explanation of the requirement as

1 provided in section 455B.110.

2 Sec. 4. Section 455B.146, Code 2005, is amended to read as
3 follows:

4 455B.146 CIVIL ACTION FOR COMPLIANCE -- LOCAL PROGRAM
5 ACTIONS.

6 1. If any order, permit, or rule of the department is
7 being violated, the attorney general shall, at the request of
8 the department or the director, institute a civil action in
9 any district court for injunctive relief to prevent any
10 further violation of the order, permit, or rule, or for the
11 assessment of a civil penalty as determined by the court, not
12 to exceed ten thousand dollars per day for each day such
13 violation continues, or both such injunctive relief and civil
14 penalty.

15 2. However, the attorney general is precluded from taking
16 an enforcement action against a person for failing to comply
17 with a requirement if the person has detrimentally relied upon
18 the department's binding explanation of the requirement as
19 provided in section 455B.110.

20 3. Notwithstanding sections 331.302 and 331.307, a city or
21 county which maintains air pollution control programs
22 authorized by certificate of acceptance under this division
23 may provide civil penalties consistent with the amount
24 established for such penalties under this division.

25 Sec. 5. Section 455B.146A, Code 2005, is amended by adding
26 the following new subsection:

27 NEW SUBSECTION. 6. The attorney general is precluded from
28 taking an enforcement action against a person for failing to
29 comply with a requirement if the person has detrimentally
30 relied upon the department's binding explanation of the
31 requirement as provided in section 455B.110.

32 Sec. 6. Section 455B.191, Code 2005, is amended by adding
33 the following new subsection:

34 NEW SUBSECTION. 7. The department or the attorney general
35 is precluded from taking an enforcement action against a

1 person for failing to comply with a requirement if the person
2 has detrimentally relied upon the department's binding
3 explanation of the requirement as provided in section
4 455B.110.

5 EXPLANATION

6 This bill amends the first three divisions of Code chapter
7 455B, which provides authority to the department of natural
8 resources and in some cases the attorney general to bring an
9 enforcement action against persons who violate provisions
10 regulating environmental quality (air and water quality).

11 BACKGROUND. Division I of Code chapter 455B provides the
12 department with general regulatory authority. The department
13 may establish a range of civil penalties for violations of the
14 Code chapter (Code section 455B.109). The attorney general is
15 authorized to institute civil or criminal judicial proceedings
16 necessary to enforce provisions of the Code chapter (Code
17 section 455B.112).

18 Division II of Code chapter 455B regulates air quality.
19 The attorney general at the request of the department may
20 institute a civil action in court to obtain injunctive relief
21 or impose a civil penalty of up to \$10,000 for a violation of
22 the division (Code section 455B.146). A person who knowingly
23 violates any provision of the division is guilty of an
24 aggravated misdemeanor (Code section 455B.146A). An
25 aggravated misdemeanor is punishable by confinement for not
26 more than two years and a fine of at least \$500 but not more
27 than \$5,000. A conviction for a subsequent violation is
28 punishable by imprisonment for not more than four years and a
29 fine of not more than \$20,000 (Code section 455B.146A).

30 Division III of Code chapter 455B regulates water quality.
31 Generally, a person who violates a provision of the division
32 is subject to a civil penalty of not more than \$5,000 (Code
33 section 455B.191). The Code section does not expressly
34 provide whether the department or the attorney general may
35 enforce the provision.

1 The department and the attorney general are required to
2 enforce the provisions of Code chapter 459 regulating animal
3 feeding operations and specifically confinement feeding
4 operations and open feedlot operations in the same manner as
5 provided in Code chapter 455B, division I (Code sections
6 459.103 and 459A.501). A person who violates an air quality
7 standard in Code chapter 459 is subject to a civil penalty
8 which is established, assessed, and collected in the same
9 manner as provided in Code section 455B.109. A person who
10 violates a water quality regulation which applies to a
11 confinement feeding operation or open feedlot operation is
12 subject to a civil penalty which is established, assessed, and
13 collected in the same manner as provided in Code section
14 455B.191. There are increased civil penalties for persons
15 classified as habitual violators which may be up to \$25,000
16 (Code section 459.604).

17 BILL'S PROVISIONS. The bill relates enforcement actions
18 brought and carried out by the department or the attorney
19 general under the provisions described herein. The bill
20 provides that the department is precluded from taking an
21 enforcement action to impose, assess, or collect a civil
22 penalty against a person who has detrimentally relied upon a
23 binding explanation by the department which erroneously
24 advises the person how to comply with a requirement of a
25 statute or departmental rule, including by performing or
26 refraining from performing an act. The bill provides that the
27 attorney general is precluded from taking an enforcement
28 action to obtain a criminal judgment or impose, assess, or
29 collect a civil penalty against a person who has detrimentally
30 relied upon such a binding explanation by the department.

31 In order to be binding, the department's explanation must
32 be in writing. If the department's explanation is made
33 verbally, it may become binding if the department confirms the
34 earlier verbal explanation as requested by the person who
35 would benefit from the confirmation. If the department does

1 not confirm the earlier verbal explanation or issue a new
2 written and binding explanation, the binding explanation is
3 that version contained in the person's request for
4 confirmation. The binding explanation may be treated as a
5 waiver or variance (see Code sections 17A.9A and 455B.143).
6 Otherwise, the department must deliver a notice to the person
7 stating that the requirement will become applicable on a
8 future date, unless the department determines that this would
9 result in undue hardship on the person who has relied upon the
10 binding explanation. The person may object to the
11 department's determination. An objection triggers a hearing
12 which must be conducted in the same manner as a contested case
13 proceeding under Code chapter 17A. A binding explanation does
14 not apply if the person obtained it in bad faith or a later
15 enacted statute or adopted rule supersedes it.

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HOUSE FILE 2744

H-8383

1 Amend House File 2744, as follows:

2 1. Page 6, by inserting after line 4 the
3 following:

4 "Sec. _____. NEW SECTION. 459.203A SWINE FARROWING
5 AND GESTATING OPERATIONS -- SPECIAL BIOSECURITY
6 SEPARATION DISTANCES.

7 1. A county board of supervisors may adopt a swine
8 biosecurity ordinance requiring a separation distance
9 in feet between an animal feeding operation
10 maintaining swine and a structure which houses more
11 than twenty-five animal units and is part of a swine
12 farrowing and gestating operation located in the
13 county. If the animal feeding operation or the
14 structure is located in a different county, the joint
15 boards of supervisors of the different counties may
16 adopt the biosecurity ordinance. On the effective
17 date of the ordinance requiring a separation distance,
18 except as provided in subsection 2 and section
19 459.205, the animal feeding operation shall not be
20 established or expanded within that separation
21 distance.

22 2. a. An animal feeding operation established or
23 expanded prior to the date that a separation distance
24 became effective as provided in a biosecurity
25 ordinance and which does not comply with the
26 separation distance may continue to operate regardless
27 of the separation distance requirement.

28 b. An animal feeding operation may be expanded
29 within a separation distance required in a biosecurity
30 ordinance if the expansion is in accordance with the
31 terms and conditions of a variance granted by the
32 county board of supervisors which adopted the
33 biosecurity ordinance.

34 Sec. _____. Section 459.205, subsection 3, Code
35 2005, is amended to read as follows:

36 3. a. A confinement feeding operation structure
37 which is constructed or expanded within any distance
38 from a any of the following:

39 (1) A residence, educational institution,
40 commercial enterprise, or bona fide religious
41 institution, ~~city, or public use area,~~ if the
42 residence, educational institution, commercial
43 enterprise, or bona fide religious institution was
44 constructed or expanded, ~~or the boundaries of the city~~
45 ~~or public use area were expanded,~~ after the date that
46 the confinement feeding operation was established.

47 (2) A city or public use area, if the boundaries
48 of the city or public use area were expanded after the
49 date that the confinement feeding operation was
50 established.

H-8383

1 (3) A swine farrowing and gestating operation, if
2 the swine farrowing and gestating operation was
3 constructed or expanded after the date that the
4 confinement feeding operation was established.

5 b. The date the confinement feeding operation was
6 established is the date on which the confinement
7 feeding operation commenced operating. A change in
8 ownership or expansion of the confinement feeding
9 operation shall not change the established date of
10 operation.

11 Sec. ____ . Section 459.303, subsection 1,
12 unnumbered paragraph 1, Code 2005, is amended to read
13 as follows:

14 The department shall approve or disapprove
15 applications for permits for the construction,
16 including the expansion, of confinement feeding
17 operation structures, as provided by rules adopted
18 pursuant to this chapter. ~~The department's decision~~
19 ~~to~~ the department shall approve or disapprove a permit for
20 the construction of a confinement feeding operation
21 structure shall be based on whether the application is
22 submitted according to procedures required by the
23 department and the application meets the requirements
24 of this chapter, including standards established by
25 the department and separation distance requirements
26 for the construction and expansion of confinement
27 feeding operation structures. A person shall not
28 begin construction of a confinement feeding operation
29 structure requiring a permit under this section,
30 unless the department first approves the person's
31 application and issues to the person a construction
32 permit. The department shall provide conditions for
33 requiring when a person must obtain a construction
34 permit.

35 Sec. ____ . EFFECTIVE DATE. The sections of this
36 Act enacting section 459.203A and amending section
37 459.205, subsection 3, and section 459.303, subsection
38 1, unnumbered paragraph 1, being deemed of immediate
39 importance, takes effect upon enactment."

40 2. Title page, line 1, by inserting after the
41 word "Act" the following: "relating to environmental
42 protection by".

43 3. Title page, line 3, by inserting after the
44 word "reliance" the following: ", providing for swine
45 operations, and providing an effective date".

46 4. By renumbering as necessary.

By WHITAKER of Van Buren

Steiner, Chair
Huseman
Reasoner

HSB 736

Agriculture

Succeeded by
SF 2744

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY
CHAIRPERSON DRAKE)

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

A BILL FOR

1 An Act precluding certain enforcement actions by the department
2 of natural resources or the attorney general based on
3 detrimental reliance.

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

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1 Section 1. Section 455B.109, Code Supplement 2005, is
2 amended to read as follows:

3 NEW SUBSECTION. 6. The department is precluded from
4 taking an enforcement action against a person for failing to
5 comply with a requirement if the person has detrimentally
6 relied upon the department's binding explanation of the
7 requirement as provided in section 455B.110.

8 Sec. 2. NEW SECTION. 455B.110 ENFORCEMENT ACTION --
9 PRECLUSION BASED ON DETRIMENTAL RELIANCE.

10 1. As used in this section, unless the context otherwise
11 requires:

12 a. "Department representative" means an official or
13 employee of the department or an agent of the department,
14 including a contractor who holds themselves out as acting on
15 behalf of the department.

16 b. "Enforcement action" means any of the following:

17 (1) For the department, issuing an order, initiating or
18 acting as a party in a contested case proceeding, or rendering
19 a proposed or final decision as provided in chapter 17A, for
20 purposes of imposing, assessing, or collecting a civil penalty
21 under section 455B.109 or 455B.191.

22 (2) For the attorney general, bringing a judicial
23 proceeding, or acting as a party in a judicial proceeding,
24 including a civil or criminal action, to the extent authorized
25 by section 455B.112, 455B.146, 455B.146A, or 455B.191.

26 2. a. The department is precluded from taking an
27 enforcement action to impose, assess, or collect a civil
28 penalty against a person who has detrimentally relied upon a
29 binding explanation by the department which erroneously
30 advises the person how to comply with a requirement of a
31 statute or departmental rule, including by performing or
32 refraining from performing an act.

33 b. The attorney general is precluded from taking an
34 enforcement action to obtain a criminal judgment or impose,
35 assess, or collect a civil penalty against a person who has

1 detrimentally relied upon a binding explanation by the
2 department as provided in paragraph "a".

3 3. The department's explanation may be provided to a
4 person who may have violated this chapter in writing or
5 verbally, including by a departmental representative. If the
6 department's explanation is provided in writing, it shall be a
7 binding explanation. If the department's explanation is
8 provided verbally, it shall become binding as follows:

9 a. The person must deliver a request for confirmation to
10 the department at an address established by the department for
11 the purpose of receiving requests for confirmation. The
12 person's request for confirmation must be in writing and
13 delivered to the department within fourteen days after the
14 department's explanation was verbally provided to the person.
15 The person's request for confirmation must include all of the
16 following:

17 (1) A return address for the department to deliver a
18 response to the person.

19 (2) The explanation sought to be confirmed.

20 (3) The date that the department's explanation was
21 provided.

22 (4) The name of the department representative who provided
23 the explanation.

24 b. The department may deliver a response to the person's
25 return address as provided in the request for confirmation.
26 The department's response shall do one of the following:

27 (1) Confirm that the department's explanation provided
28 verbally to the person is binding. The department may deliver
29 the response to the person at any time.

30 (2) Deny that the department's explanation is binding.
31 The department may include a binding explanation in writing.
32 The department's response must be delivered to the person
33 within thirty days after the person delivers the request for
34 confirmation to the department. If the department fails to
35 deliver a timely response to the person, the explanation

1 sought to be confirmed by the person as provided in the
2 person's request for confirmation shall be the binding
3 explanation.

4 4. The department's explanation, the person's request for
5 confirmation, and the department's response may be transmitted
6 in an electronic format, including but not limited to the
7 internet, and shall be deemed written.

8 5. a. If a binding explanation concerns a requirement
9 subject to a variance as provided in section 455B.143, or
10 otherwise as a waiver or variance as provided in section
11 17A.9A, the binding explanation shall be deemed to be a waiver
12 or variance as provided in those sections.

13 b. If a binding explanation concerns a requirement that is
14 not subject to a variance or waiver as provided in section
15 455B.143 or 17A.9A, the department shall deliver a notice to
16 the person who has been precluded from being subjected to an
17 enforcement action. The notice shall provide that the person
18 may be subject to an enforcement action on or after a future
19 date. The department shall establish a future date which
20 allows the person a reasonable period to comply with the
21 requirement. However, the department shall not nullify a
22 binding explanation if it would result in undue hardship to
23 the person including but not limited to requiring the person
24 to move, demolish, or rebuild a structure which was
25 constructed or expanded in reliance on the department's
26 binding explanation.

27 6. The department or attorney general may take an
28 enforcement action against a person regardless of a binding
29 explanation if any of the following applies:

30 a. The person obtains the binding explanation in bad
31 faith, having actual knowledge that the explanation was
32 erroneous.

33 b. The binding explanation concerns a requirement in a
34 statute or departmental rule that has been superseded by a
35 requirement in a statute enacted or rule adopted after the

1 explanation becomes binding.

2 7. Nothing in this section prevents the department from
3 conducting an investigation or issuing a subpoena requiring
4 the attendance of a witness or the production of evidence
5 pertinent to a hearing.

6 Sec. 3. Section 455B.112, Code Supplement 2005, is amended
7 to read as follows:

8 455B.112 ACTIONS BY ATTORNEY GENERAL.

9 1. In addition to the duty to commence legal proceedings
10 at the request of the director or commission under this
11 chapter; chapter 459, subchapters I, II, III, IV, and VI; or
12 chapter 459A, the attorney general may institute civil or
13 criminal proceedings, including an action for injunction, to
14 enforce the provisions of this chapter; chapter 459,
15 subchapters I, II, III, IV, and VI; or chapter 459A, including
16 orders or permits issued or rules adopted under this chapter;
17 chapter 459, subchapters I, II, III, IV, and VI; or chapter
18 459A.

19 2. However, the attorney general is precluded from taking
20 an enforcement action against a person for failing to comply
21 with a requirement if the person has detrimentally relied upon
22 the department's binding explanation of the requirement as
23 provided in section 455B.110.

24 Sec. 4. Section 455B.146, Code 2005, is amended to read as
25 follows:

26 455B.146 CIVIL ACTION FOR COMPLIANCE -- LOCAL PROGRAM
27 ACTIONS.

28 1. If any order, permit, or rule of the department is
29 being violated, the attorney general shall, at the request of
30 the department or the director, institute a civil action in
31 any district court for injunctive relief to prevent any
32 further violation of the order, permit, or rule, or for the
33 assessment of a civil penalty as determined by the court, not
34 to exceed ten thousand dollars per day for each day such
35 violation continues, or both such injunctive relief and civil

1 penalty.

2 2. However, the attorney general is precluded from taking
3 an enforcement action against a person for failing to comply
4 with a requirement if the person has detrimentally relied upon
5 the department's binding explanation of the requirement as
6 provided in section 455B.110.

7 3. Notwithstanding sections 331.302 and 331.307, a city or
8 county which maintains air pollution control programs
9 authorized by certificate of acceptance under this division
10 may provide civil penalties consistent with the amount
11 established for such penalties under this division.

12 Sec. 5. Section 455B.146A, Code 2005, is amended by adding
13 the following new subsection:

14 NEW SUBSECTION. 6. The attorney general is precluded from
15 taking an enforcement action against a person for failing to
16 comply with a requirement if the person has detrimentally
17 relied upon the department's binding explanation of the
18 requirement as provided in section 455B.110.

19 Sec. 6. Section 455B.191, Code 2005, is amended by adding
20 the following new subsection:

21 NEW SUBSECTION. 7. The department or the attorney general
22 is precluded from taking an enforcement action against a
23 person for failing to comply with a requirement if the person
24 has detrimentally relied upon the department's binding
25 explanation of the requirement as provided in section
26 455B.110.

27 **EXPLANATION**

28 This bill amends the first three divisions of Code chapter
29 455B, which provides authority to the department of natural
30 resources and in some cases the attorney general to bring an
31 enforcement action against persons who violate provisions
32 regulating environmental quality (air and water quality).

33 **BACKGROUND.** Division I of Code chapter 455B provides the
34 department with general regulatory authority. The department
35 may establish a range of civil penalties for violations of the

1 Code chapter (Code section 455B.109). The attorney general is
2 authorized to institute civil or criminal judicial proceedings
3 necessary to enforce provisions of the Code chapter (Code
4 section 455B.112).

5 Division II of Code chapter 455B regulates air quality.
6 The attorney general at the request of the department may
7 institute a civil action in court to obtain injunctive relief
8 or impose a civil penalty of up to \$10,000 for a violation of
9 the division (Code section 455B.146). A person who knowingly
10 violates any provision of the division is guilty of an
11 aggravated misdemeanor (Code section 455B.146A). An
12 aggravated misdemeanor is punishable by confinement for not
13 more than two years and a fine of at least \$500 but not more
14 than \$5,000. A conviction for a subsequent violation is
15 punishable by imprisonment for not more than four years and a
16 fine of not more than \$20,000 (Code section 455B.146A).

17 Division III of Code chapter 455B regulates water quality.
18 Generally, a person who violates a provision of the division
19 is subject to a civil penalty of not more than \$5,000 (Code
20 section 455B.191). The Code section does not expressly
21 provide whether the department or the attorney general may
22 enforce the provision.

23 The department and the attorney general are required to
24 enforce the provisions of Code chapter 459 regulating animal
25 feeding operations and specifically confinement feeding
26 operations and open feedlot operations in the same manner as
27 provided in Code chapter 455B, division I (Code sections
28 459.103 and 459A.501). A person who violates an air quality
29 standard in Code chapter 459 is subject to a civil penalty
30 which is established, assessed, and collected in the same
31 manner as provided in Code section 455B.109. A person who
32 violates a water quality regulation which applies to a
33 confinement feeding operation or open feedlot operation is
34 subject to a civil penalty which is established, assessed, and
35 collected in the same manner as provided in Code section

S.F. _____

HSB 736
H.F. _____

1 455B.191. There are increased civil penalties for persons
2 classified as habitual violators which may be up to \$25,000
3 (Code section 459.604).

4 BILL'S PROVISIONS. The bill relates enforcement actions
5 brought and carried out by the department or the attorney
6 general under the provisions described herein. The bill
7 provides that the department is precluded from taking an
8 enforcement action to impose, assess, or collect a civil
9 penalty against a person who has detrimentally relied upon a
10 binding explanation by the department which erroneously
11 advises the person how to comply with a requirement of a
12 statute or departmental rule, including by performing or
13 refraining from performing an act. The bill provides that the
14 attorney general is precluded from taking an enforcement
15 action to obtain a criminal judgment or impose, assess, or
16 collect a civil penalty against a person who has detrimentally
17 relied upon such a binding explanation by the department.

18 In order to be binding, the department's explanation must
19 be in writing. If the department's explanation is made
20 verbally, it may become binding if the department confirms the
21 earlier verbal explanation as requested by the person who
22 would benefit from the confirmation. If the department does
23 not confirm the earlier verbal explanation or issue a new
24 written and binding explanation, the binding explanation is
25 that version contained in the person's request for
26 confirmation. The binding explanation may be treated as a
27 waiver or variance (see Code sections 455B.143 and 17A.9A).
28 Otherwise, the department must deliver a notice to the person
29 stating that the requirement will become applicable on a
30 future date, unless this would result in undue hardship on the
31 person who has relied upon the binding explanation. A binding
32 explanation does not apply if the person obtained it in bad
33 faith or a later enacted statute or adopted rule supersedes
34 it.

35

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