
ASSEMBLY BILL NO. 41—ASSEMBLYMAN CARPENTER

PREFILED JANUARY 12, 1999

Referred to Committee on Natural Resources, Agriculture and Mining

SUMMARY—Prohibits director of state department of conservation and natural resources from making certain determinations concerning control of water pollution under certain circumstances. (BDR 40-725)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to water pollution; prohibiting the director of the state department of conservation and natural resources from making certain determinations concerning the control of water pollution if the determination is based solely upon certain information or is made without conducting an investigation; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 445A of NRS is hereby amended by adding thereto
2 a new section to read as follows:
3 *The director shall not issue an order, commence a civil action, seek*
4 *injunctive relief or request the attorney general to institute a criminal*
5 *prosecution pursuant to the provisions of NRS 445A.675, 445A.680,*
6 *445A.690 or 445A.695, if the determination of the director to take any of*
7 *those actions is:*
8 1. *Based solely upon a report or other information provided to him by*
9 *an agency of the United States or this state, other than the division; or*
10 2. *Made without conducting an investigation of the alleged act or*
11 *practice for which he is making the determination.*
12 **Sec. 2.** NRS 445A.310 is hereby amended to read as follows:
13 445A.310 As used in NRS 445A.300 to 445A.730, inclusive, ***and***
14 ***section 1 of this act***, unless the context otherwise requires, the ***words and***
15 terms defined in NRS 445A.315 to 445A.420, inclusive, have the meanings
16 ascribed to them in those sections.

1 **Sec. 3.** NRS 445A.675 is hereby amended to read as follows:

2 445A.675 1. ~~{Whenever}~~ *Except as otherwise provided in section 1*
3 *of this act, if* the director finds that any person is engaged or is about to
4 engage in any act or practice which violates any provision of NRS
5 445A.300 to 445A.730, inclusive, any standard or other regulation adopted
6 by the commission pursuant to those sections, or any permit issued by the
7 department pursuant to those sections, except for any violation of a
8 provision concerning a diffuse source, the director may:

9 (a) Issue an order pursuant to NRS 445A.690;

10 (b) Commence a civil action pursuant to NRS 445A.695 or 445A.700;
11 or

12 (c) Request the attorney general to institute by indictment or information
13 a criminal prosecution pursuant to NRS 445A.705 and 445A.710.

14 2. ~~{Such}~~ *The* remedies and sanctions *specified in subsection 1* are
15 cumulative, and the institution of any proceeding or action seeking any one
16 of the remedies or sanctions does not bar any simultaneous or subsequent
17 action or proceeding seeking any other of the remedies or sanctions.

18 **Sec. 4.** NRS 445A.680 is hereby amended to read as follows:

19 445A.680 ~~{Whenever}~~ *Except as otherwise provided in section 1 of*
20 *this act, if* the director finds that any person is engaged or about to engage
21 in any act or practice which violates any provision ~~{in}~~ *of* NRS 445A.335,
22 445A.565 and 445A.570, *or* any standard or other regulation adopted
23 pursuant thereto, with respect to a diffuse source, the director may:

24 1. Issue an order:

25 (a) Specifying the provision or provisions of NRS 445A.300 to
26 445A.730, inclusive, or the regulation or order alleged to be violated or
27 about to be violated;

28 (b) Indicating the facts alleged which constitute a violation thereof; and

29 (c) Prescribing the necessary corrective action to be taken and a
30 reasonable ~~{time}~~ *period* for completing that corrective action,
31 but no civil or criminal penalty may be imposed for failure to obey the
32 order.

33 2. If the corrective action is not taken or completed, or without first
34 issuing an order, commence a civil action pursuant to *the provisions of*
35 NRS 445A.695.

36 **Sec. 5.** NRS 445A.690 is hereby amended to read as follows:

37 445A.690 1. ~~{Whenever}~~ *Except as otherwise provided in section 1*
38 *of this act, if* the director finds that any person is engaged or is about to
39 engage in any act or practice which constitutes or will constitute a violation
40 of any provision of NRS 445A.300 to 445A.730, inclusive, or of any rule,
41 regulation or standard promulgated by the commission, or of any permit or
42 order issued by the department under NRS 445A.300 to 445A.730,
43 inclusive, the director may issue an order:

1 (a) Specifying the provision or provisions of NRS 445A.300 to
2 445A.730, inclusive, or the regulation or order alleged to be violated or
3 about to be violated;

4 (b) Indicating the facts alleged which constitute a violation thereof; and

5 (c) Prescribing the necessary corrective action to be taken and a
6 reasonable ~~{time}~~ *period* for completing that corrective action.

7 2. Any compliance order is final and is not subject to review unless the
8 person ~~{or persons}~~ against whom ~~{such}~~ *the* order is issued, within 30 days
9 after the date ~~{such}~~ *the* order is served, ~~{request}~~ *requests* by written
10 petition a hearing before the commission.

11 **Sec. 6.** NRS 445A.695 is hereby amended to read as follows:

12 445A.695 1. ~~{The}~~ *Except as otherwise provided in section 1 of this*
13 *act, the* director may seek injunctive relief in the appropriate court to
14 prevent the continuance or occurrence of any act or practice which violates
15 any provision of NRS 445A.300 to 445A.730, inclusive, or any permit,
16 rule, regulation or order issued pursuant thereto.

17 2. On a showing by the director that a person is engaged, or is about to
18 engage, in any act or any practice which violates or will violate any of the
19 provisions of NRS 445A.300 to 445A.730, inclusive, or any rule,
20 regulation, standard, permit or order issued ~~{thereunder,}~~ *pursuant to those*
21 *provisions*, the court may issue, without bond ~~{such}~~ *, any* prohibitory and
22 mandatory injunctions as the facts may warrant, including temporary
23 restraining orders issued ex parte or, after notice and hearing, preliminary
24 injunctions or permanent injunctions.

25 3. Failure to establish lack of an adequate remedy at law or irreparable
26 harm is not a ground for denying a request for a temporary restraining order
27 or injunction.

28 4. The court may require the posting of a sufficient performance bond
29 or other security to ~~{assure}~~ *ensure* compliance with the court order within
30 the ~~{time}~~ *period* prescribed.