

SENATE BILL NO. 363—SENATOR TITUS

MARCH 10, 1999

Referred to Committee on Natural Resources

SUMMARY—Provides incentives for removal or remediation of environmental contamination.
(BDR 40-799)

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

~

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

AN ACT relating to hazardous materials; providing incentives for the voluntary removal or rendering harmless of environmental contamination; 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 459 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 to 23, inclusive, of this act.
- 3 **Sec. 2.** *As used in sections 2 to 23, inclusive, of this act, unless the*
4 *context otherwise requires, the words and terms defined in sections 3 to*
5 *11, inclusive, of this act have the meanings ascribed to them in those*
6 *sections.*
- 7 **Sec. 3.** *“Administrator” means the administrator of the division.*
- 8 **Sec. 3.5.** *“Commission” means the state environmental commission.*
- 9 **Sec. 4.** *“Division” means the division of environmental protection of*
10 *the state department of conservation and natural resources.*
- 11 **Sec. 5.** *“Eligible property” means real property located in this state*
12 *that:*
- 13 1. *Except as otherwise provided in section 11.5 of this act, is not:*
14 (a) *Listed, proposed for listing or eligible for listing on the National*
15 *Priorities List contained in Appendix B of Part 300 of Title 40 of the*
16 *Code of Federal Regulations; and*

1 (b) Owned, managed or controlled by a person or governmental entity
2 subject to a pending investigation or ongoing enforcement action of the
3 Federal Government pursuant to the Federal Resource Conservation and
4 Recovery Act, 42 U.S.C. §§ 6901 et seq., or the Comprehensive
5 Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§
6 9601 et seq.;

7 2. Is not owned, managed or controlled by a person or governmental
8 entity subject to a pending investigation or ongoing enforcement action
9 of the division with respect to that real property; and

10 3. Contains the site or probable site of a release of a hazardous
11 substance.

12 Sec. 6. "Hazardous substance" means a substance or combination
13 of substances whose presence gives rise to liability or potential liability on
14 the part of an owner or operator pursuant to NRS 459.537 or 42 U.S.C. §
15 9607(a).

16 Sec. 7. "Participant" means a person whose application to
17 participate in the program has been approved by the administrator.

18 Sec. 8. "Program" means voluntary cleanup and relief from liability
19 pursuant to sections 2 to 23, inclusive, of this act.

20 Sec. 9. "Prospective purchaser" means a person who is not a
21 responsible party and who has entered into a contract, or holds an
22 option, to purchase an eligible property for its fair market value in a
23 transaction at arm's length.

24 Sec. 10. "Remedial agreement" means an agreement between a
25 participant and the division specifying the action to be taken to remove or
26 remedy hazardous substances present on an eligible property.

27 Sec. 11. "Responsible party" means:

28 1. A current or former owner or operator of a site or facility who
29 caused or contributed to the release of a hazardous substance at the site
30 or facility; and

31 2. A generator or transporter of a hazardous substance who caused
32 or contributed to the release of the hazardous substance at a site or
33 facility.

34 Sec. 11.5. Real property located in this state that is listed, proposed
35 for listing or eligible for listing on the National Priorities List contained
36 in Appendix B of Part 300 of Title 40 of the Code of Federal Regulations
37 or that is owned, managed or controlled by a person or governmental
38 entity subject to a pending investigation or ongoing enforcement action
39 by the Federal Government pursuant to the Federal Resource
40 Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., or the
41 Comprehensive Environmental Response, Compensation, and Liability
42 Act, 42 U.S.C. §§ 9601 et seq., shall be deemed to be eligible property if:

1 1. The property satisfies the elements of the definition of eligible
2 property set forth in subsections 2 and 3 of section 5 of this act; and

3 2. The reason for which the property was listed or is proposed or
4 eligible for listing on the National Priorities List or for the investigation
5 or enforcement action by the Federal Government is unrelated to the
6 hazardous substance that a participant intends to remove from or
7 remediate on the property pursuant to a remedial agreement submitted
8 pursuant to section 13 of this act.

9 **Sec. 12.** 1. A responsible party with respect to an eligible property,
10 or a prospective purchaser of an eligible property may apply to
11 participate in the program. The application must be made to the
12 administrator in writing and must include:

13 (a) An environmental assessment of the property, including the
14 source, nature and location of all hazardous substances known to, or
15 reasonably believed by, the applicant to be located on the property;

16 (b) A proposed general plan for removal or remediation on the
17 property; and

18 (c) The application fee and any other information required pursuant
19 to the regulations adopted by the commission pursuant to section 22.5 of
20 this act.

21 2. The administrator shall approve or deny an application made
22 pursuant to subsection 1 within 60 days after its submission, unless for
23 good cause he extends the period for not more than an additional 30
24 days. Notice of an extension must be delivered to the applicant before the
25 expiration of the original period for processing the application.

26 3. If the administrator denies an application, he shall deliver to the
27 applicant, within 30 days after the denial, a written explanation of the
28 reasons for denial.

29 **Sec. 13.** 1. After an application is approved, the participant shall
30 submit a remedial agreement to the administrator for his approval.

31 2. The administrator shall approve a remedial agreement only if:

32 (a) The agreement:

33 (1) Provides for the recovery by the division of all direct and
34 indirect costs, in excess of the application fee, of overseeing and
35 supervising the removal or remediation of the hazardous substance or
36 substances on the property;

37 (2) Specifies the substance to be removed from or remediated on the
38 property, the actions to be taken and the standards to be met with respect
39 to removal or remediation, and the uses for which the property will not
40 be suitable after the removal or remediation is carried out; and

41 (3) Includes a grant to the administrator of an irrevocable easement
42 or right of entry onto the property to oversee and observe the work during
43 and after the removal or remediation;

1 (b) *The removal or remediation of the hazardous substance or*
2 *substances will:*

3 (1) *Restore the property to the condition to which it would be*
4 *restored if the division caused action to be taken pursuant to NRS*
5 *459.537;*

6 (2) *Not cause, contribute to or worsen any release or threatened*
7 *release of a hazardous substance on the property;*

8 (3) *Adequately protect human health and the environment; and*

9 (4) *Comply with any applicable regulations adopted by the*
10 *commission pursuant to section 22.5 of this act; and*

11 (c) *The participant is financially capable of undertaking the removal*
12 *or remediation of the hazardous substance or substances.*

13 3. *If the participant is not the owner of the property, the*
14 *administrator shall not approve a remedial agreement unless the owner*
15 *first agrees to the terms of the agreement.*

16 4. *Before approving a remedial agreement, the administrator shall:*

17 (a) *Publish a notice and brief summary of the agreement in a*
18 *newspaper of general circulation in the county where the property is*
19 *located;*

20 (b) *Make reasonable efforts to provide personal notice to all*
21 *responsible parties known to him and to all owners and residents of*
22 *property within 500 yards of the outer boundary of the property on which*
23 *the work is to be performed;*

24 (c) *Provide 30 days for the submission of written comments; and*

25 (d) *Hold a public hearing in the county where the property is located.*

26 5. *If the administrator disapproves a proposed remedial agreement,*
27 *he shall deliver to the participant, within 30 days after the disapproval, a*
28 *written explanation of the reasons for the disapproval.*

29 **Sec. 14. 1.** *After a participant has completed the action specified in*
30 *his remedial agreement for the removal or remediation of hazardous*
31 *substances, the participant shall certify to the administrator that the*
32 *action has been completed according to the agreement. After the*
33 *administrator has verified the certification, he shall issue the participant*
34 *a certificate of completion.*

35 2. *A certificate of completion must:*

36 (a) *Contain the name of the participant and of any other person*
37 *relieved from liability by the certificate and the legal description of the*
38 *property to which it relates;*

39 (b) *Summarize the nature of the removal or remediation performed on*
40 *the property, and the nature of the relief provided by sections 2 to 23,*
41 *inclusive, of this act; and*

1 (c) Be recorded by the administrator in the office of the county
2 recorder of the county where the real property is located, and indexed to
3 show its relation to that real property.

4 3. If the administrator does not issue a certificate of completion after
5 receiving the participant's certification that the work has been completed,
6 he shall deliver to the participant, within 30 days after his receipt of the
7 certificate, a written explanation of the reasons why the certificate was
8 not issued.

9 **Sec. 15. 1.** Except as otherwise provided in section 16 of this act,
10 the holder of a certificate of completion issued by the administrator is not
11 a responsible party with respect to a release of a hazardous substance
12 occurring on the property to which the certificate relates before the
13 certificate was issued. The state may not maintain an action pursuant to
14 federal law or NRS 459.537 to recover costs from the holder with respect
15 to such a release.

16 2. The relief from liability provided by a certificate of completion
17 remains effective despite a subsequent change in state or federal law.

18 **Sec. 16.** The holder of a certificate of completion is not released
19 from liability:

20 1. If he obtained approval of his application, approval of his
21 remedial agreement or issuance of the certificate by means of fraud,
22 misrepresentation or a knowing failure to disclose material information;

23 2. If the existence of the hazardous substance on the property was
24 not disclosed in his remedial agreement, whether or not he knew or
25 should have known of its existence;

26 3. With respect to a release of a hazardous substance caused by him
27 or his agent, unless the release is remedied before the certificate of
28 completion is issued and is included in the certificate of completion;

29 4. In a criminal prosecution or an action for damage to a natural
30 resource;

31 5. In an action for nuisance at common law, for trespass or for the
32 conduct of an abnormally dangerous activity;

33 6. With respect to a use of the property for which the property is no
34 longer suitable after the removal or remediation has been carried out, as
35 identified pursuant to subparagraph (2) of paragraph (a) of subsection 2
36 of section 13 of this act; or

37 7. For a release of any hazardous substance not specified in the
38 remedial agreement.

39 **Sec. 17. 1.** The relief from liability provided by section 15 of this
40 act extends to another person who:

41 (a) Purchases or leases the property to which the certificate of
42 completion relates; or

1 (b) Acquires, merges with or purchases substantially all of the assets
2 of the holder of the certificate,
3 after the certificate is issued, if the other person is not otherwise a
4 responsible party. The other person is subject to any duties of the original
5 holder of the certificate under the remedial agreement or the certificate.

6 2. The relief provided to a subsequent owner or lessee continues even
7 if it is determined that the original holder of the certificate is not released
8 from liability because of a provision of section 16 of this act if:

9 (a) The subsequent owner or lessee purchased or leased the property
10 in good faith for its fair market value; and

11 (b) The actions of the original holder of the certificate cannot be
12 attributed to the subsequent owner or lessee under a provision of law
13 other than this chapter.

14 3. If the original holder of a certificate of completion is a prospective
15 purchaser, the relief from liability provided by section 15 of this act
16 extends to the person from whom he purchases the property if:

17 (a) The seller and purchaser so agree;

18 (b) The seller bears the expense of removal or remediation performed
19 on the property, directly or indirectly;

20 (c) The seller is a responsible party only because of his ownership of
21 the property; and

22 (d) The administrator approves the extension of relief and
23 incorporates it into the certificate of completion.

24 **Sec. 18. 1.** A person who, without participating in the management
25 of a parcel of real property, holds or is the beneficiary of evidence of title
26 to the property primarily to protect a security interest in the property is
27 not a responsible party with respect to a release of a hazardous substance
28 on the property if:

29 (a) The owner of the property is relieved from liability under sections
30 2 to 23, inclusive, of this act with respect to the release;

31 (b) The owner or holder of evidence of title did not cause the release;
32 and

33 (c) The owner or holder of evidence of title does not participate
34 actively in decisions concerning hazardous substances on the property.

35 2. A lender to a prospective purchaser who has filed an application
36 to participate in the program pursuant to section 12 of this act or a
37 lender who forecloses his security interest in property pursuant to NRS
38 40.430 to 40.450, inclusive, or 107.080 to 107.100, inclusive, and within a
39 reasonable period after the foreclosure, not to exceed 2 years, sells,
40 transfers or conveys the property to a prospective purchaser who has filed
41 an application to participate in the program pursuant to section 12 of this
42 act is not a responsible party solely as a result of:

43 (a) Foreclosing a security interest in the property; or

1 **(b) Making a loan to the prospective purchaser if the loan:**

2 **(1) Is to be used for acquiring property or removing or remediating**
3 **hazardous substances on property; and**

4 **(2) Is secured by the property that is to be acquired or on which is**
5 **located the hazardous substances that are to be removed or remediated.**

6 **Sec. 19. A prospective purchaser is not a responsible party solely as**
7 **the result of:**

8 **1. Conducting an environmental assessment of real property;**

9 **2. Contracting to purchase, or acquiring an option to purchase, real**
10 **property;**

11 **3. Applying to participate in a program; or**

12 **4. Conducting or supervising removal or remediation of a hazardous**
13 **substance or substances, while exercising reasonable care, pursuant to**
14 **an approved remedial agreement.**

15 **Sec. 20. 1. The holder of a certificate of completion may maintain**
16 **an action against a responsible party to recover the holder's costs of**
17 **performing removal or remediation of a hazardous substance or**
18 **substances pursuant to a program.**

19 **2. If the holder is a prospective purchaser and his seller qualifies for**
20 **relief from liability pursuant to section 17 of this act, the seller may**
21 **maintain an action against a responsible party to recover the seller's**
22 **costs of performing removal or remediation of a hazardous substance or**
23 **substances pursuant to a program.**

24 **Sec. 21. 1. A participant may terminate his participation in a**
25 **program upon 30 days' written notice to the administrator.**

26 **2. The administrator may terminate the participation of a participant**
27 **in a program only if:**

28 **(a) The participant, after a reasonable period, has not proposed and is**
29 **unlikely to be able to propose a remedial agreement that meets the**
30 **requirements of section 13 of this act;**

31 **(b) The participant fails materially to comply with the requirements of**
32 **the remedial agreement or sections 2 to 23, inclusive, of this act; or**

33 **(c) From information not known to the administrator when the**
34 **remedial agreement was approved, he determines that the removal or**
35 **remediation in progress or to be performed on the property poses an**
36 **imminent and substantial threat of harm to human health or the**
37 **environment.**

38 **3. An application, remedial agreement or certificate of completion is**
39 **not an admission of liability on the part of the applicant or participant,**
40 **but a termination of participation does not otherwise affect the rights of**
41 **the division.**

1 **Sec. 22. 1.** *A decision of the administrator to approve an*
2 *application or a remedial agreement or to issue a certificate of*
3 *completion is final and may not be reviewed.*

4 **2.** *If the administrator denies an application for any reason other*
5 *than incompleteness, disapproves a proposed remedial agreement, does*
6 *not issue a certificate of completion within the time allowed or terminates*
7 *the participation of a participant in a program, the applicant or*
8 *participant may apply to the commission to review the decision pursuant*
9 *to chapter 233B of NRS.*

10 **Sec. 22.5.** *The commission shall adopt such regulations as the*
11 *commission determines are necessary to carry out the provisions of*
12 *sections 2 to 23, inclusive, of this act. Regulations adopted pursuant to*
13 *this section:*

14 **1.** *Must include, without limitation, provisions relating to the:*

15 **(a)** *Duties and functions of consultants who are certified, or exempt*
16 *from the requirement of certification, as provided by NRS 459.500;*

17 **(b)** *Financial capability and responsibility required of a participant;*
18 *and*

19 **(c)** *Required form and content of and any fee required to be submitted*
20 *with an application, certificate or remedial agreement.*

21 **2.** *May include, without limitation, provisions relating to the*
22 *issuance of a temporary, interim or partial certificate of completion or*
23 *progress with respect to a remedial agreement.*

24 **Sec. 23.** *The administrator shall make a good faith effort to*
25 *negotiate with the Environmental Protection Agency to ensure that a*
26 *certificate of completion issued pursuant to sections 2 to 23, inclusive, of*
27 *this act will relieve a participant from liability to the United States to the*
28 *same extent as those sections provide relief from liability to this state.*

29 **Sec. 23.5.** NRS 459.530 is hereby amended to read as follows:

30 459.530 1. All proceeds from agreements entered into pursuant to
31 NRS 459.505, *all application fees collected pursuant to section 12 of this*
32 *act*, all reimbursements and penalties recovered pursuant to NRS 459.537,
33 and all fees collected, all civil penalties imposed and all interest accrued
34 pursuant to NRS 459.400 to 459.600, inclusive, must be deposited with the
35 state treasurer for credit to the account for the management of hazardous
36 waste, which is hereby created in the state general fund. The money in the
37 account must be paid as other claims against the state are paid.

38 2. The state treasurer shall account separately for each of the fees
39 collected pursuant to NRS 459.512.

40 **Sec. 24.** NRS 459.537 is hereby amended to read as follows:

41 459.537 1. If the person responsible for a leak or spill of or an
42 accident involving hazardous waste, hazardous material or a regulated
43 substance does not act promptly and appropriately to clean and

1 decontaminate the affected area properly, and if his inaction presents an
2 imminent and substantial hazard to human health, public safety or the
3 environment, money from the account for the management of hazardous
4 waste may be expended to pay the costs of:

5 (a) Responding to the leak, spill or accident;

6 (b) Coordinating the efforts of state, local and federal agencies
7 responding to the leak, spill or accident;

8 (c) Managing the cleaning and decontamination of an area for the
9 disposal of hazardous waste or the site of the leak, spill or accident;

10 (d) Removing or contracting for the removal of hazardous waste,
11 hazardous material or a regulated substance which presents an imminent
12 danger to human health, public safety or the environment; or

13 (e) Services rendered in responding to the leak, spill or accident, by
14 consultants certified pursuant to regulations adopted by the commission.

15 2. Except as otherwise provided in this subsection ~~H~~ or sections 2 to
16 23, inclusive, of this act, the director shall demand reimbursement of the
17 account for money expended pursuant to subsection 1 from any person who
18 is responsible for the accident, leak or spill, or who owns or controls the
19 hazardous waste, hazardous material or a regulated substance, or the area
20 used for the disposal of the waste, material or substance. Payment of the
21 reimbursement is due within 60 days after the person receives notice from
22 the director of the amount due. The provisions of this section do not apply
23 to a spill or leak of or an accident involving natural gas or liquefied
24 petroleum gas while it is under the responsibility of a public utility.

25 3. At the request of the director, the attorney general shall initiate
26 recovery by legal action of the amount of any unpaid reimbursement plus
27 interest at a rate determined pursuant to NRS 17.130 computed from the
28 date of the incident.

29 4. As used in this section:

30 (a) "Does not act promptly and appropriately" means that the person:

31 (1) Cannot be notified of the incident within 2 hours after the initial
32 attempt to contact him;

33 (2) Does not, within 2 hours after receiving notification of the
34 incident, make an oral or written commitment to clean and decontaminate
35 the affected area properly;

36 (3) Does not act upon the commitment within 24 hours after making
37 it;

38 (4) Does not clean and decontaminate the affected area properly; or

39 (5) Does not act immediately to clean and decontaminate the affected
40 area properly, if his inaction presents an imminent and substantial hazard to
41 human health, public safety or the environment.

42 (b) "Responding" means any efforts to mitigate, attempt to mitigate or
43 assist in the mitigation of the effects of a leak or spill of or an accident

- 1 involving hazardous waste, hazardous material or a regulated substance,
2 including, without limitation, efforts to:
- 3 (1) Contain and dispose of the hazardous waste, hazardous material or
4 regulated substance.
 - 5 (2) Clean and decontaminate the area affected by the leak, spill or
6 accident.
 - 7 (3) Investigate the occurrence of the leak, spill or accident.
- 8 **Sec. 25.** 1. This section and sections 1, 22.5 and 23 of this act
9 become effective upon passage and approval.
- 10 2. Sections 2 to 22, inclusive, 23.5 and 24 of this act become effective
11 on October 1, 1999.

~