

SENATE BILL NO. 327—SENATOR JACOBSEN

MARCH 13, 2001

Referred to Committee on Natural Resources

SUMMARY—Revises provisions relating to certain hazardous materials. (BDR 40-164)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: 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 certain hazardous materials; revising provisions governing the disposal of certain hazardous materials; revising provisions governing motor carriers who transport certain hazardous materials; 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.** NRS 459.400 is hereby amended to read as follows:
2 459.400 The purposes of NRS 459.400 to 459.600, inclusive, are to:
3 1. Protect human health, public safety and the environment from the
4 effects of improper, inadequate or unsound management of hazardous
5 waste;
6 2. Establish a program for regulation of the storage, generation,
7 ~~{transportation,}~~ treatment and disposal of hazardous waste; and
8 3. Ensure safe and adequate management of hazardous waste.
9 **Sec. 2.** NRS 459.490 is hereby amended to read as follows:
10 459.490 Regulations adopted by the commission pursuant to NRS
11 459.485 must be based upon studies, guidelines and regulations of the
12 Federal Government and must:
13 1. Set out mechanisms for determining whether any waste is
14 hazardous;
15 2. Govern combinations of wastes which are not compatible and may
16 not be stored, treated or disposed of together;
17 3. Govern generation, storage, treatment and disposal of hazardous
18 waste;
19 4. Govern operation and maintenance of facilities for the treatment,
20 storage and disposal of hazardous waste, including the qualifications and
21 requirements for ownership, continuity of operation, closure and care after
22 closing;



1 5. Provide standards for location, design and construction of facilities
2 for treatment, storage and disposal of hazardous waste;
3 6. ~~Except as otherwise provided in NRS 459.700 to 459.780,~~
4 ~~inclusive, govern the transportation.~~ *Govern the* packing and labeling of
5 hazardous waste in a manner consistent with regulations issued by the
6 United States Department of Transportation relating to hazardous waste;
7 7. Provide procedures and requirements for the use of a manifest for
8 each shipment of hazardous waste. The procedures and requirements must
9 be applied equally to those persons who transport hazardous waste
10 generated by others and those who transport hazardous waste which they
11 have generated themselves; and
12 8. Take into account climatic and geologic variations and other factors
13 relevant to the management of hazardous waste.
14 **Sec. 3.** NRS 459.500 is hereby amended to read as follows:
15 459.500 1. Except as otherwise provided in NRS 459.700 to
16 459.780, inclusive, or 459.800 to 459.856, inclusive:
17 (a) Regulations of the commission must provide:
18 (1) For safety in the packaging, handling ~~transportation~~ and
19 disposal of hazardous waste, including the safety of vehicles and drivers;
20 (2) For the certification of consultants involved in consultation
21 regarding the response to and the clean up of leaks of hazardous waste,
22 hazardous material or a regulated substance from underground storage
23 tanks, the clean up of spills of or accidents involving hazardous waste,
24 hazardous material or a regulated substance, or the management of
25 hazardous waste; and
26 (3) That a person employed full time by a business to act as such a
27 consultant is exempt from the requirements of certification ~~if~~
28 ~~(I) If he is certified by the federal Occupational Safety and Health~~
29 ~~Administration~~ *if the person:*
30 *(I) Meets the applicable requirements of 29 C.F.R. § 1910.120* to
31 manage such waste, materials or substances; and
32 *(II) While Is* acting in the course of that full-time employment.
33 (b) Regulations of the commission may:
34 (1) Provide for the licensing and other necessary regulation of
35 generators, including shippers, ~~brokers and carriers, both intrastate and~~
36 ~~interstate.~~ who cause that waste to be transported into or through Nevada
37 or for disposal in Nevada;
38 (2) Require that the person responsible for a spill, leak or accident
39 involving hazardous waste, hazardous material or a regulated substance,
40 obtain advice on the proper handling of the spill, leak or accident from a
41 consultant certified under the regulations adopted pursuant to paragraph
42 (a); and
43 (3) Establish standards relating to the education, experience,
44 performance and financial responsibility required for the certification of
45 consultants.
46 2. The regulations may include provisions for:
47 (a) Fees to pay the cost of inspection, certification and other regulation,
48 excluding any activities conducted pursuant to NRS 459.7052 to 459.728,
49 inclusive; and



1 (b) Administrative penalties of not more than \$2,500 per violation or
2 \$10,000 per shipment for violations by persons licensed by the department,
3 and the criminal prosecution of violations of its regulations by persons who
4 are not licensed by the department.

5 3. Designated employees of the department and the Nevada highway
6 patrol division shall enforce the regulations of the commission relating to
7 the ~~transport and~~ handling of hazardous waste ~~as they affect the safety~~
8 ~~of drivers and vehicles~~ and the leakage or spill of that waste from
9 packages.

10 **Sec. 4.** NRS 459.7058 is hereby amended to read as follows:

11 459.7058 1. Except as otherwise required by federal law, the
12 department shall immediately suspend or revoke the registration and permit
13 for the transportation of hazardous materials, or deny the approval of an
14 application for such a registration and permit, by a motor carrier who:

15 (a) Knowingly makes a materially false or misleading statement on the
16 application for the registration and permit;

17 (b) Is assigned an unsatisfactory safety rating pursuant to 49 C.F.R. Part
18 385;

19 (c) Is subject to an order entered pursuant to 49 C.F.R. § 386.72;

20 (d) Does not maintain the financial responsibility for liability required
21 pursuant to 49 C.F.R. Part 387 and the laws of this state;

22 (e) Knowingly uses a forged certificate of registration or permit for the
23 transportation of hazardous materials;

24 (f) Knowingly allows the use of his registration or permit for the
25 transportation of hazardous materials by any person other than an agent or
26 employee of the motor carrier; or

27 (g) Is convicted of a serious violation or repeated violations of the laws
28 of this state for the regulation of ~~common, contract or private~~ motor
29 carriers ~~of property~~.

30 2. Upon taking any action pursuant to subsection 1, the department
31 shall:

32 (a) Notify the motor carrier, by certified mail, of the reasons for its
33 action and of any action the motor carrier may take to obtain the
34 reinstatement of his registration and permit or the approval of his
35 application; and

36 (b) Provide the motor carrier with an opportunity for a fair and impartial
37 hearing on the matter.

38 **Sec. 5.** NRS 459.706 is hereby amended to read as follows:

39 459.706 1. The department shall not issue a permit required pursuant
40 to NRS 459.7052 to a ~~common, contract or private~~ motor carrier ~~of~~
41 ~~property~~ who is seeking to transport radioactive waste upon a public
42 highway of this state without first determining that the carrier transporting
43 the waste is in compliance and will continue to comply with all laws and
44 regulations of this state and the Federal Government respecting the
45 handling and transportation of radioactive waste and the safety of drivers
46 and vehicles.

47 2. Any ~~common, contract or private~~ motor carrier ~~of property~~ who
48 maintains his books and records outside of this state must, in addition to
49 any other assessments and fees provided by law, be assessed by the



1 department for an amount equal to the travel expenses, including the excess
2 of the out-of-state subsistence allowances over the in-state subsistence
3 allowances, as fixed by NRS 281.160, of employees of the department for
4 investigations, inspections and audits which may be required to be
5 performed outside of this state in carrying out the provisions of
6 subsection 1.

7 3. The assessment provided for in subsection 2 must be determined by
8 the department upon the completion of each such investigation, inspection
9 or audit and is due within 30 days after the date on which the affected
10 ~~common, contract or private~~ motor carrier receives the assessment. The
11 records of the department relating to the additional costs incurred by reason
12 of necessary travel must be open for inspection by the affected carrier at
13 any time within the 30-day period.

14 **Sec. 6.** NRS 459.708 is hereby amended to read as follows:

15 459.708 1. A ~~common, contract or private~~ motor carrier ~~of~~
16 ~~property~~ who is transporting radioactive waste shall reject any package
17 containing the waste which is tendered to him for transport in this state if
18 the package:

- 19 (a) Is leaking or spilling its contents;
20 (b) Does not bear a:
21 (1) ~~Mark~~ **Marking** required pursuant to 49 C.F.R. Part 172, Subpart
22 D;
23 (2) Label required pursuant to 49 C.F.R. Part 172, Subpart E; or
24 (3) Placard required pursuant to 49 C.F.R. Part 172, Subpart F; or
25 (c) Is not accompanied by a:
26 (1) Shipping paper required pursuant to 49 C.F.R. Part 172, Subpart
27 C; or
28 (2) Manifest required pursuant to 10 C.F.R. Part 20, Appendix G.

29 2. A carrier who accepts radioactive waste for transport in this state is
30 liable for any package in his custody which leaks or spills its contents, does
31 not bear the required ~~mark~~ **marking**, label or placard, or is not
32 accompanied by the required shipping paper or manifest, unless, in the case
33 of a leak or spill of the waste and by way of affirmative defense, the carrier
34 proves that he did not and could not know of the leak when he accepted the
35 package for transport.

36 **Sec. 7.** NRS 459.709 is hereby amended to read as follows:

37 459.709 1. A ~~common, contract or private~~ motor carrier ~~of~~
38 ~~property~~ shall not transport any high-level radioactive waste or spent
39 nuclear fuel upon a public highway of this state unless:

- 40 (a) The high-level radioactive waste or spent nuclear fuel is contained in
41 a package that has been approved for that purpose pursuant to 10 C.F.R.
42 Part 71; and
43 (b) The carrier has complied with the provisions of 10 C.F.R. Part 71
44 and 10 C.F.R. Part 73 requiring the advance notification of the governor of
45 this state or his designee.

46 2. As used in this section:

- 47 (a) "High-level radioactive waste" has the meaning ascribed to it in 10
48 C.F.R. § 72.3.



1 (b) "Spent nuclear fuel" has the meaning ascribed to it in 10 C.F.R. §
2 72.3.

3 **Sec. 8.** NRS 459.718 is hereby amended to read as follows:

4 459.718 1. A person responsible for the care, custody or control of a
5 hazardous material which is involved in an accident or incident occurring
6 during the transportation of the hazardous material by *a* motor carrier,
7 including any accident or incident occurring during any loading, unloading
8 or temporary storage of the hazardous material while it is subject to active
9 shipping papers and before it has reached its ultimate consignee, shall
10 notify the division , *consistent with the requirements of 49 C.F.R. §*
11 *171.15*, as soon as practicable if, as a result of the hazardous material:

- 12 (a) A person is killed;
- 13 (b) A person receives injuries that require hospitalization;
- 14 (c) Any damage to property exceeds \$50,000;
- 15 (d) There is an evacuation of the general public for 1 hour or more;
- 16 (e) One or more major transportation routes or facilities are closed or
17 shut down for 1 hour or more;
- 18 (f) There is an alteration in the operational flight pattern or routine of
19 any aircraft;
- 20 (g) Any radioactive contamination is suspected;
- 21 (h) Any contamination by an infectious substance is suspected;
- 22 (i) There is a release of a liquid marine pollutant in excess of 450 liters
23 or a solid marine pollutant in excess of 400 kilograms; or
- 24 (j) Any situation exists at the site of the accident or incident which, in
25 the judgment of the person responsible for the care, custody or control of
26 the hazardous material, should be reported to the division.

27 2. The notification required pursuant to this section must include:

- 28 (a) The name of the person providing the notification;
- 29 (b) The name and address of the motor carrier represented by that
30 person;
- 31 (c) The telephone number where that person can be contacted;
- 32 (d) The date, time and location of the accident or incident;
- 33 (e) The extent of any injuries;
- 34 (f) The classification, name and quantity of the hazardous material
35 involved, if that information is available; and
- 36 (g) The type of accident or incident, the nature of the hazardous
37 material involved and whether there is a continuing danger to life at the
38 scene of the accident or incident.

39 3. A person may satisfy the requirements of this section by providing
40 the information specified in subsection 2 to the person who responds to a
41 telephone call placed to:

- 42 (a) The number 911 in an area where that number is used for
43 emergencies; or
- 44 (b) The number zero in an area where the number 911 is not used for
45 emergencies.

46 **Sec. 9.** NRS 459.735 is hereby amended to read as follows:

47 459.735 1. The contingency account for hazardous materials is
48 hereby created in the state general fund.



1 2. The commission shall administer the contingency account for
2 hazardous materials, and the money in the account may be expended only
3 for:

4 (a) Carrying out the provisions of NRS 459.735 to 459.773, inclusive;

5 (b) Carrying out the provisions of ~~Public Law 99-499 and Title I of~~
6 ~~Public Law 93-633;~~ *42 U.S.C. §§ 11001 et seq. and 49 U.S.C. §§ 5101 et*
7 *seq.;*

8 (c) Maintaining and supporting the operations of the commission and
9 local emergency planning committees;

10 (d) Training and equipping state and local personnel to respond to
11 accidents and incidents involving hazardous materials; and

12 (e) The operation of training programs and a training center for
13 handling emergencies relating to hazardous materials and related fires
14 pursuant to NRS 477.045.

15 3. All money received by this state ~~as a result of Public Law 99-499~~
16 ~~or Title I of Public Law 93-633;~~ *pursuant to 42 U.S.C. §§ 11001 et seq. or*
17 *49 U.S.C. §§ 5101 et seq.* must be deposited with the state treasurer to the
18 credit of the contingency account for hazardous materials. In addition, all
19 money received by the commission from any source must be deposited
20 with the state treasurer to the credit of the contingency account for
21 hazardous materials. The state controller shall transfer from the
22 contingency account to the operating account of the state fire marshal such
23 money collected pursuant to chapter 477 of NRS as is authorized for
24 expenditure in the budget of the state fire marshal for use pursuant to
25 paragraph (e) of subsection 2.

26 4. Upon the presentation of budgets in the manner required by law,
27 money to support the operation of the commission pursuant to this chapter,
28 other than its provision of grants, must be provided by direct legislative
29 appropriation from the state highway fund to the contingency account for
30 hazardous materials.

31 5. The interest and income earned on the money in the contingency
32 account for hazardous materials, after deducting any applicable charges,
33 must be credited to the account.

34 6. All claims against the contingency account for hazardous materials
35 must be paid as other claims against the state are paid.

36 **Sec. 10.** NRS 459.738 is hereby amended to read as follows:

37 459.738 1. The state emergency response commission is hereby
38 created for the purpose of carrying out the provisions of ~~NRS 414.135;~~
39 ~~Public Law 99-499;~~ *42 U.S.C. §§ 11001 et seq.* and other matters relating
40 thereto.

41 2. The commission consists of not more than 25 members appointed
42 by the governor. The governor shall, to the extent practicable, appoint
43 persons to the commission who have technical expertise in responding to
44 emergencies.

45 3. The term of each member of the commission is 4 years. A member
46 may be reappointed, and there is no limit on the number of terms that a
47 member may serve.

48 4. The governor shall appoint one or more of the members of the
49 commission to serve as chairman or co-chairmen.



1 5. The commission may employ, within the limits of legislative
2 appropriations, such staff as is necessary to the performance of its duties.

3 **Sec. 11.** NRS 459.740 is hereby amended to read as follows:

4 459.740 The commission may:

5 1. Adopt regulations for the purpose of enforcing its responsibilities
6 pursuant to ~~{Public Law 99-499-}~~ *42 U.S.C. §§ 11001 et seq.*

7 2. Accept gifts and grants of money and other revenues for the purpose
8 of enforcing its responsibilities pursuant to ~~{Public Law 99-499-}~~ *42 U.S.C.*
9 *§§ 11001 et seq.*

10 **Sec. 12.** NRS 459.742 is hereby amended to read as follows:

11 459.742 The commission, in carrying out its duties and within the
12 limits of legislative appropriations and other available money, may:

13 1. Enter into contracts, leases or other agreements or transactions;

14 2. Provide grants of money to local emergency planning committees to
15 improve their ability to respond to emergencies involving hazardous
16 materials;

17 3. Assist with the development of comprehensive plans for responding
18 to such emergencies in this state;

19 4. Provide technical assistance and administrative support to the
20 telecommunications unit of the communication and computing division of
21 the department of information technology for the development of systems
22 for communication during such emergencies;

23 5. Provide technical and administrative support and assistance for
24 training programs;

25 6. Develop a system to provide public access to data relating to
26 hazardous materials;

27 7. Support any activity or program eligible to receive money from the
28 contingency account for hazardous materials;

29 8. Adopt regulations setting forth the manner in which the division of
30 emergency management of the department ~~{of motor vehicles and public~~
31 ~~safety}~~ shall:

32 (a) Allocate money received by the division which relates to hazardous
33 materials or is received pursuant to ~~{Public Law 99-499 or Title I of Public~~
34 ~~Law 93-633-}~~ *42 U.S.C. §§ 11001 et seq. or 49 U.S.C. §§ 5101 et seq.*; and

35 (b) Approve programs developed to address planning for and
36 responding to emergencies involving hazardous materials; and

37 9. Coordinate the activities administered by state agencies to carry out
38 the provisions of chapter 459 of NRS, ~~{Public Law 99-499 and Title I of~~
39 ~~Public Law 93-633-}~~ *42 U.S.C. §§ 11001 et seq. and 49 U.S.C. §§ 5101 et*
40 *seq.*

41 **Sec. 13.** NRS 459.744 is hereby amended to read as follows:

42 459.744 1. The commission shall establish by regulation:

43 (a) A schedule of fees for its services and regulatory activities. The fees
44 must be set at an amount which approximates the cost to the commission of
45 performing those services and activities.

46 (b) A fee, not to exceed \$5,000 per year, to be paid by each person who
47 stores an extremely hazardous material in an amount greater than the
48 threshold planning quantity established for such material in ~~{Appendix A}~~



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1 ~~or B of Part 355 of Title 40 of the Code of Federal Regulations.] 40 C.F.R.~~
2 ~~Part 355, Appendix A or B.~~ The fee must include:
3 (1) A filing fee for each facility in which such material is stored; and
4 (2) A surcharge for each ton of such material stored in excess of 1
5 ton,
6 and must be paid on or before March 1 of each year for the preceding
7 calendar year.
8 (c) A fee, not to exceed \$2,000 per year, to be paid by each person who
9 manufactures for transport an extremely hazardous material in an amount
10 greater than the threshold planning quantity established for such material in
11 ~~[Appendix A or B of Part 355 of Title 40 of the Code of Federal~~
12 ~~Regulations.] 40 C.F.R. Part 355, Appendix A or B.~~ The fee must include:
13 (1) A filing fee for each facility in which such material is
14 manufactured; and
15 (2) A surcharge for each ton of such material which is manufactured
16 for transport in this state,
17 and must be paid on or before January 31 of each year for the preceding
18 calendar year.
19 (d) A reporting fee of \$500 to be paid by each person who is required to
20 submit a toxic chemical release form pursuant to ~~[Public Law 99-499,] 42~~
21 ~~U.S.C. §§ 11001 et seq.,~~ which becomes due upon the filing of the form.
22 2. The commission shall not require any person to pay more than
23 \$5,000 in fees imposed pursuant to subsection 1 for any calendar year.
24 **Sec. 14.** NRS 459.792 is hereby amended to read as follows:
25 459.792 1. The state emergency response commission, each local
26 emergency planning committee appointed by the commission, and their
27 respective members are immune from liability for the death of or injury to
28 persons, and for injury to property, resulting from the performance of their
29 functions under this chapter and under ~~[Public Law 99-499 as that law~~
30 ~~existed on January 1, 1993.] 42 U.S.C. §§ 11001 et seq.~~
31 2. Except as limited by NRS 459.794 and 459.796, a person who
32 provides equipment, advice or other assistance in mitigating or attempting
33 to mitigate the effects of a discharge of hazardous material, or in
34 preventing, cleaning up, or disposing of such a discharge, or in attempting
35 to prevent, clean up, or dispose of such a discharge, is immune from
36 liability for the death of or injury to persons, and for injury to property,
37 resulting from those activities.
38 **Sec. 15.** NRS 459.7012, 459.7014 and 459.7028 are hereby repealed.

TEXT OF REPEALED SECTIONS

459.7012 “Common motor carrier of property” defined.
“Common motor carrier of property” has the meaning ascribed to it in NRS
706.046.

459.7014 “Contract motor carrier” defined. “Contract motor
carrier” has the meaning ascribed to it in NRS 706.051.



459.7028 “Private motor carrier of property” defined. “Private motor carrier of property” has the meaning ascribed to it in NRS 706.111.

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