

SENATE BILL NO. 422—SENATOR TITUS

MARCH 19, 2007

Referred to Committee on Natural Resources

SUMMARY—Requires the State Environmental Commission to establish a program for the reduction of greenhouse gases emitted by affected units in this State. (BDR 40-678)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
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 pollution; requiring the State Environmental Commission to establish a program for the reduction of greenhouse gases emitted by affected units in this State; setting forth certain required provisions that the Commission must include in the program; limiting the amount of greenhouse gases that certain affected units may emit; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the State Environmental Commission may adopt certain regulations to prevent, abate and control air pollution and establish standards for air quality. (NRS 445B.210) Also under existing law, a district board of health, county board of health or board of county commissioners in each county whose population is 100,000 or more (currently Clark and Washoe Counties) must establish a program for the control of air pollution and administer that program. In any other county, or in any city, a similar program may be established through cooperative or interlocal agreement or the county or city may establish its own program for the control of air pollution. (NRS 445B.500)

Section 5 of this bill requires the Commission to establish, by regulation, a statewide program for the control of greenhouse gases emitted by certain generators of electricity in this State. **Section 4** of this bill defines a “greenhouse gas” to mean carbon dioxide, hydro fluorocarbons, methane, nitrous oxide, per fluorocarbons and sulphur hexafluoride. The program must include, without limitation, a method for creating allowances of emissions from affected units and the manner in which the allowances must be banked and traded. **Section 6** of this bill imposes a limitation



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17 on the annual amount of greenhouse gases that an affected unit may emit. The
18 limitation becomes effective on January 1, 2011, and proceeds in accordance with a
19 schedule set forth in **section 6**.

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

1 **Section 1.** Chapter 445B of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 6, inclusive, of this
3 act.

4 **Sec. 2.** *“Affected unit” means a facility for the generation of*
5 *electricity that:*

6 1. *Has a capacity of at least 25 megawatts;*

7 2. *Combusts a fuel that emits a greenhouse gas; and*

8 3. *Generates electricity for sale.*

9 **Sec. 3.** *“Allowance” means an authorization granted by the*
10 *Commission pursuant to the program specified in section 5 of this*
11 *act to emit 1 metric ton of carbon dioxide or an equivalent of*
12 *carbon dioxide allocated to an affected unit by the Commission.*

13 **Sec. 4.** *“Greenhouse gas” means:*

14 1. *Carbon dioxide;*

15 2. *Hydro fluorocarbons;*

16 3. *Methane;*

17 4. *Nitrous oxide;*

18 5. *Per fluorocarbons; and*

19 6. *Sulphur hexafluoride.*

20 **Sec. 5.** 1. *In addition to any regulation adopted pursuant to*
21 *NRS 445B.210 to prevent, abate and control air pollution, the*
22 *Commission shall, by regulation, establish a statewide program for*
23 *the control of greenhouse gases emitted by affected units in this*
24 *State.*

25 2. *The program must include, without limitation, provisions*
26 *setting forth:*

27 (a) *A method for determining allowances which results in the*
28 *creation of allowances that are quantifiable, surplus and legally*
29 *enforceable;*

30 (b) *The manner in which allowances must be banked and*
31 *traded, including, without limitation, the allocation of the*
32 *allowances among affected units and the auctioning of those*
33 *allowances; and*

34 (c) *The manner in which the Commission will record*
35 *transactions occurring within the program.*

36 **Sec. 6.** *Notwithstanding any provision of law to the contrary,*
37 *on and after January 1, 2011, the annual tonnage limitation for*



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1 *the aggregate quantity of emissions of greenhouse gases from all*
2 *affected units in this State must not exceed:*

3 1. *For calendar years 2011, 2012, 2013 and 2014, the*
4 *aggregate quantity of emissions of greenhouse gases emitted by*
5 *those affected units for calendar year 2006, as determined by the*
6 *Commission;*

7 2. *For calendar year 2015, the aggregate quantity of*
8 *emissions of greenhouse gases emitted by those affected units for*
9 *calendar year 2001, as determined by the Commission;*

10 3. *For calendar years 2016, 2017, 2018 and 2019, the*
11 *aggregate quantity of emissions of greenhouse gases emitted by*
12 *those affected units during the immediately preceding calendar*
13 *year less 1 percent; and*

14 4. *For calendar year 2020 and each calendar year thereafter,*
15 *the aggregate quantity of emissions of greenhouse gases emitted*
16 *by those affected units during the immediately preceding calendar*
17 *year less 1.5 percent.*

18 **Sec. 7.** NRS 445B.105 is hereby amended to read as follows:

19 445B.105 As used in NRS 445B.100 to 445B.640, inclusive,
20 *and sections 2 to 6, inclusive, of this act*, unless the context
21 otherwise requires, the words and terms defined in NRS 445B.110
22 to 445B.155, inclusive, *and sections 2, 3 and 4 of this act* have the
23 meanings ascribed to them in those sections.

24 **Sec. 8.** NRS 445B.210 is hereby amended to read as follows:

25 445B.210 The Commission may:

26 1. Subject to the provisions of NRS 445B.215, adopt
27 regulations consistent with the general intent and purposes of NRS
28 445B.100 to 445B.640, inclusive, *and sections 2 to 6, inclusive, of*
29 *this act* to prevent, abate and control air pollution.

30 2. Establish standards for air quality.

31 3. Require access to records relating to emissions which cause
32 or contribute to air pollution.

33 4. Cooperate with other governmental agencies, including
34 other states and the Federal Government.

35 5. Establish such requirements for the control of emissions as
36 may be necessary to prevent, abate or control air pollution.

37 6. By regulation:

38 (a) Designate as a hazardous air pollutant any substance which,
39 on or after October 1, 1993, is on the federal list of hazardous air
40 pollutants pursuant to 42 U.S.C. § 7412(b); and

41 (b) Delete from designation as a hazardous air pollutant any
42 substance which, after October 1, 1993, is deleted from the federal
43 list of hazardous air pollutants pursuant to 42 U.S.C. § 7412(b),

44 ➡ based upon the Commission's determination of the extent to
45 which such a substance presents a risk to the public health.



7. Hold hearings to carry out the provisions of NRS 445B.100 to 445B.640, inclusive, *and sections 2 to 6, inclusive, of this act*, except as otherwise provided in those sections.

8. Establish fuel standards for both stationary and mobile sources of air contaminants. Fuel standards for mobile sources of air contaminants must be established to achieve air quality standards that protect the health of the residents of the State of Nevada.

9. Require elimination of devices or practices which cannot be reasonably allowed without generation of undue amounts of air contaminants.

Sec. 9. NRS 445B.220 is hereby amended to read as follows:

445B.220 In carrying out the purposes of NRS 445B.100 to 445B.640, inclusive, *and sections 2 to 6, inclusive, of this act*, the Commission, in addition to any other action which may be necessary or appropriate to carry out ~~[such]~~ *those* purposes, may:

1. Cooperate with appropriate federal officers and agencies of the Federal Government, other states, interstate agencies, local governmental agencies and other interested parties in all matters relating to air pollution control in preventing or controlling the pollution of the air in any area.

2. Recommend measures for control of air pollution originating in this State.

Sec. 10. NRS 445B.230 is hereby amended to read as follows:

445B.230 The Department shall:

1. Make such determinations and issue such orders as may be necessary to implement the purposes of NRS 445B.100 to 445B.640, inclusive ~~[]~~, *and sections 2 to 6, inclusive, of this act*.

2. Apply for and receive grants or other funds or gifts from public or private agencies.

3. Cooperate and contract with other governmental agencies, including other states and the Federal Government.

4. Conduct investigations, research and technical studies consistent with the general purposes of NRS 445B.100 to 445B.640, inclusive ~~[]~~, *and sections 2 to 6, inclusive, of this act*.

5. Prohibit as specifically provided in NRS 445B.300 and 445B.320 and as generally provided in NRS 445B.100 to 445B.640, inclusive, *and sections 2 to 6, inclusive, of this act* the installation, alteration or establishment of any equipment, device or other article capable of causing air pollution.

6. Require the submission of such preliminary plans and specifications and other information as it deems necessary to process permits.

7. Enter into and inspect at any reasonable time any premises containing an air contaminant source or a source under construction



1 for purposes of ascertaining compliance with NRS 445B.100 to
2 445B.640, inclusive ~~[]~~, *and sections 2 to 6, inclusive, of this act.*

3 8. Specify the manner in which incinerators may be
4 constructed and operated.

5 9. Institute proceedings to prevent continued violation of any
6 order issued by the Director and to enforce the provisions of NRS
7 445B.100 to 445B.640, inclusive ~~[]~~, *and sections 2 to 6, inclusive,*
8 *of this act.*

9 10. Require access to records relating to emissions which cause
10 or contribute to air pollution.

11 11. Take such action in accordance with the rules, regulations
12 and orders promulgated by the Commission as may be necessary to
13 prevent, abate and control air pollution.

14 **Sec. 11.** NRS 445B.500 is hereby amended to read as follows:

15 445B.500 1. Except as otherwise provided in this section and
16 in NRS 445B.310 ~~[]~~ *and section 5 of this act:*

17 (a) The district board of health, county board of health or board
18 of county commissioners in each county whose population is
19 100,000 or more shall establish a program for the control of air
20 pollution and administer the program within its jurisdiction unless
21 superseded.

22 (b) The program:

23 (1) Must include, without limitation, standards for the control
24 of emissions, emergency procedures and variance procedures
25 established by ordinance or local regulation which are equivalent to
26 or stricter than those established by statute or state regulation;

27 (2) May, in a county whose population is 400,000 or more,
28 include requirements for the creation, receipt and exchange for
29 consideration of credits to reduce and control air contaminants in
30 accordance with NRS 445B.508; and

31 (3) Must provide for adequate administration, enforcement,
32 financing and staff.

33 (c) ~~[The]~~ *Except as otherwise provided in section 5 of this act,*
34 *the* district board of health, county board of health or board of
35 county commissioners is designated as the air pollution control
36 agency of the county for the purposes of NRS 445B.100 to
37 445B.640, inclusive, and *sections 2 to 6, inclusive, of this act and,*
38 the Federal Act insofar as it pertains to local programs, and that
39 agency is authorized to take all action necessary to secure for the
40 county the benefits of the Federal Act.

41 (d) Powers and responsibilities provided for in NRS 445B.210,
42 445B.240 to 445B.470, inclusive, 445B.560, 445B.570, 445B.580
43 and 445B.640 are binding upon and inure to the benefit of local air
44 pollution control authorities within their jurisdiction.



2. The local air pollution control board shall carry out all provisions of NRS 445B.215 with the exception that notices of public hearings must be given in any newspaper, qualified pursuant to the provisions of chapter 238 of NRS, once a week for 3 weeks. The notice must specify with particularity the reasons for the proposed regulations and provide other informative details. NRS 445B.215 does not apply to the adoption of existing regulations upon transfer of authority as provided in NRS 445B.610.

3. ~~Ha~~ *Except as otherwise provided in section 5 of this act, in* a county whose population is 400,000 or more, the local air pollution control board may delegate to an independent hearing officer or hearing board its authority to determine violations and levy administrative penalties for violations of the provisions of NRS 445B.100 to 445B.450, inclusive, and 445B.500 to 445B.640, inclusive, *and sections 2 to 6, inclusive, of this act* or any regulation adopted pursuant to those sections. If such a delegation is made, 17.5 percent of any penalty collected must be deposited in the county treasury in an account to be administered by the local air pollution control board to a maximum of \$17,500 per year. The money in the account may only be used to defray the administrative expenses incurred by the local air pollution control board in enforcing the provisions of NRS 445B.100 to 445B.640, inclusive ~~[-]~~, *and sections 2 to 6, inclusive, of this act*. The remainder of the penalty must be deposited in the county school district fund of the county where the violation occurred.

4. Any county whose population is less than 100,000 or any city may meet the requirements of this section for administration and enforcement through cooperative or interlocal agreement with one or more other counties, or through agreement with the State, or may establish its own program for the control of air pollution. If the county establishes such a program, it is subject to the approval of the Commission.

5. No district board of health, county board of health or board of county commissioners may adopt any regulation or establish a compliance schedule, variance order or other enforcement action relating to the control of emissions from plants which generate electricity by using steam produced by the burning of fossil fuel.

6. For the purposes of this section, "plants which generate electricity by using steam produced by the burning of fossil fuel" means plants that burn fossil fuels in a boiler to produce steam for the production of electricity. The term does not include any plant which uses technology for a simple or combined cycle combustion turbine, regardless of whether the plant includes duct burners.



1 **Sec. 12.** NRS 445B.508 is hereby amended to read as follows:

2 445B.508 1. ~~Has~~ *Except as otherwise provided in section 5*
3 *of this act, in* a county whose population is 400,000 or more, a
4 district board of health or board of county commissioners may, as a
5 part of its program for the control of air pollution established
6 pursuant to NRS 445B.500, require each person or entity that is
7 proposing to locate a new source of air pollution within its
8 jurisdiction or to modify an existing source of air pollution within
9 its jurisdiction in such a way as to increase emissions of air
10 pollutants, to reduce or mitigate any increase in emissions in
11 accordance with regulations adopted by such board.

12 2. If a district board of health or board of county
13 commissioners imposes the requirement described in subsection 1,
14 its program established pursuant to NRS 445B.500 must:

15 (a) Provide a method for determining credits which results in
16 credits that are quantifiable, surplus and legally enforceable;

17 (b) Set forth the manner in which credits will be banked and
18 traded, and the manner in which such transactions will be tracked
19 and accounted for by the board; and

20 (c) By not later than January 1, 2002, prohibit any person or
21 entity from purchasing or selling credits of one type of pollutant if
22 such credits will be used subsequently to produce a different type of
23 pollutant.

24 3. If a county operates a program for the control of air
25 pollution that allows a person operating or responsible for the
26 existence of a source to earn credits for maintaining or reducing the
27 level of air contaminant emitted from the source, the program:

28 (a) Must allow the person to earn credits for reducing the level
29 of air contaminant emitted from that source through the use of solar
30 energy; and

31 (b) Must not allow the person to earn credits for reducing the
32 level of air contaminant emitted from that source if such a reduction
33 is required as a component of a penalty imposed against the person.

34 4. A credit earned pursuant to this section does not constitute
35 an interest in property.

36 5. As used in this section:

37 (a) "Credit" means an administratively created asset that may:

38 (1) Entitle a person operating or responsible for the existence
39 of a source to allow the source to emit a certain level of air
40 contaminant above a baseline that is determined by the board;

41 (2) Be used to comply with the requirements of a permit; and

42 (3) Be traded or sold to another person.

43 (b) "Surplus" means that a credit is not earned by compliance
44 with a requirement of the state implementation plan adopted by this



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1 State pursuant to 42 U.S.C. § 7410 or any other federal, state or
2 local law, ordinance or regulation.

3 **Sec. 13.** NRS 445B.540 is hereby amended to read as follows:

4 445B.540 1. A county or area whose local jurisdiction over
5 air pollution control has been superseded may establish or restore a
6 local air pollution control program if such program is approved as
7 adequate by the Commission.

8 2. A district, county or city which has an air pollution control
9 program in operation on July 1, 1971, may continue its program if
10 within 1 year after July 1, 1971, the program is approved as
11 adequate by the Commission. Such approval shall be deemed
12 granted unless the Commission specifically disapproves the program
13 after a public hearing. Nothing in NRS 445B.100 to 445B.640,
14 inclusive, *and sections 2 to 6, inclusive, of this act* is to be
15 construed as invalidating any rule, regulation, enforcement action,
16 variance, permit, cease and desist order, compliance schedule, or
17 any other legal action taken by any existing air pollution control
18 authority pursuant to former NRS 445.400 to 445.595, inclusive, on
19 or before July 1, 1971, unless it is specifically repealed, superseded
20 or disapproved, pursuant to NRS 445B.215.

21 **Sec. 14.** NRS 445B.590 is hereby amended to read as follows:

22 445B.590 1. The Account for the Management of Air Quality
23 is hereby created in the State General Fund, to be administered by
24 the Department.

25 2. Money in the Account for the Management of Air Quality
26 must be expended only:

27 (a) To carry out and enforce the provisions of NRS 445B.100 to
28 445B.640, inclusive, and *sections 2 to 6, inclusive, of this act and*
29 of any regulations adopted pursuant to those sections, including,
30 without limitation, the direct and indirect costs of:

31 (1) Preparing regulations and recommendations for
32 legislation regarding those provisions;

33 (2) Furnishing guidance for compliance with those
34 provisions;

35 (3) Reviewing and acting upon applications for operating
36 permits;

37 (4) Administering and enforcing the terms and conditions of
38 operating permits;

39 (5) Monitoring emissions and the quality of the ambient air;

40 (6) Preparing inventories and tracking emissions;

41 (7) Performing modeling, analyses and demonstrations; and

42 (8) Establishing and administering a program for the
43 provision of assistance, pursuant to 42 U.S.C. § 7661f, to small
44 businesses operating stationary sources; and



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(b) In any other manner required as a condition to the receipt of federal money for the purposes of NRS 445B.100 to 445B.640, inclusive ~~[]~~, *and sections 2 to 6, inclusive, of this act.*

3. All interest earned on the money in the Account for the Management of Air Quality must be credited to the Account. Claims against the Account for the Management of Air Quality must be paid as other claims against the State are paid.

Sec. 15. NRS 445B.600 is hereby amended to read as follows:

445B.600 NRS 445B.100 to 445B.595, inclusive, *and sections 2 to 6, inclusive, of this act* does not abridge, limit, impair, create, enlarge or otherwise affect substantively or procedurally the right of any person to damages or other relief on account of injury to persons or property and to maintain any action or other appropriate proceeding therefor in the courts of this State or the courts of the United States on a tort claim against the United States or a federal agency as authorized by federal statutes.

Sec. 16. NRS 445B.610 is hereby amended to read as follows:

445B.610 1. All rules, regulations and standards promulgated by the State Commission of Environmental Protection pertaining to air pollution control in force on July 1, 1973, ~~[shall]~~ remain in effect until such time as revised by the State Environmental Commission pursuant to NRS 445B.100 to 445B.640, inclusive ~~[]~~, *and sections 2 to 6, inclusive, of this act.*

2. Any and all action taken by the State Commission of Environmental Protection, including but not limited to existing orders, notices of violation, variances, permits, cease and desist orders and compliance schedules, shall remain in full force and effect and binding upon the State Environmental Commission, the Director, the Department and all persons to whom such action may apply on or after July 1, 1973.

3. In the event that a local air pollution control program described in NRS 445B.500 is transferred in whole or in part from an existing air pollution control agency to another agency, all rules and regulations adopted by the existing agency may be readopted as amended to reflect the transfer of authorities by the new agency immediately upon such transfer, and the provisions of NRS 445B.215 ~~[shall]~~ *do* not apply to such readoption.

4. If a transfer of local authority as described in subsection 3 occurs, all orders, notices of violation, variances, cease and desist orders, compliance schedules and other legal action taken by the existing air pollution control board, control officer ~~[]~~ or hearing board ~~[shall]~~ remain in full force and effect, and ~~[shall]~~ *must* not be invalidated by reason of such transfer.



Sec. 17. NRS 445B.640 is hereby amended to read as follows:

445B.640 1. Except as otherwise provided in subsection 4 and NRS 445C.010 to 445C.120, inclusive, any person who violates any provision of NRS 445B.100 to 445B.450, inclusive, and 445B.470 to 445B.640, inclusive, *and sections 2 to 6, inclusive, of this act*, or any regulation in force pursuant thereto, other than NRS 445B.570 on confidential information, is guilty of a civil offense and shall pay an administrative fine levied by the Commission of not more than \$10,000 per day per offense. Each day of violation constitutes a separate offense.

2. The Commission shall by regulation establish a schedule of administrative fines not exceeding \$500 for lesser violations of any provision of NRS 445B.100 to 445B.450, inclusive, and 445B.470 to 445B.640, inclusive, *and sections 2 to 6, inclusive, of this act*, or any regulation in force pursuant thereto.

3. Action pursuant to subsection 1 or 2 is not a bar to enforcement of the provisions of NRS 445B.100 to 445B.450, inclusive, and 445B.470 to 445B.640, inclusive, *and sections 2 to 6, inclusive, of this act*, regulations in force pursuant thereto, and orders made pursuant to NRS 445B.100 to 445B.450, inclusive, and 445B.470 to 445B.640, inclusive, *and sections 2 to 6, inclusive, of this act* by injunction or other appropriate remedy, and the Commission or the Director may institute and maintain in the name of the State of Nevada any such enforcement proceedings.

4. Any person who fails to pay a fine levied pursuant to subsection 1 or 2 within 30 days after the fine is imposed is guilty of a misdemeanor. The provisions of this subsection do not apply to persons found by the court to be indigent.

5. All administrative fines collected by the Commission pursuant to this section must be deposited in the county school district fund of the county where the violation occurred.

Sec. 18. NRS 445C.030 is hereby amended to read as follows:

445C.030 "Environmental requirement" means a requirement contained in NRS 444.440 to 444.645, inclusive, 445A.300 to 445A.730, inclusive, 445B.100 to 445B.640, inclusive, *and sections 2 to 6, inclusive, of this act*, 459.400 to 459.600, inclusive, 459.700 to 459.856, inclusive, or 519A.010 to 519A.280, inclusive, or in a regulation adopted pursuant to any of those ~~statutes~~ *sections*.

Sec. 19. NRS 459.460 is hereby amended to read as follows:

459.460 1. NRS 459.400 to 459.600, inclusive, do not apply to any activity or substance which is subject to control pursuant to NRS 445A.300 to 445A.955, inclusive, and 459.010 to 459.290, inclusive, except to the extent that they can be applied in a manner which is not inconsistent with those sections.



2. The Director shall administer NRS 459.400 to 459.600, inclusive, in a manner which avoids duplication of the provisions of NRS 445A.300 to 445A.955, inclusive, and 445B.100 to 445B.640, inclusive, *and sections 2 to 6, inclusive, of this act*, and the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 et seq.

Sec. 20. NRS 459.930 is hereby amended to read as follows:

459.930 1. Notwithstanding any other provision of law to the contrary and regardless of whether he is a participant in a program, a person who:

(a) Is a bona fide prospective purchaser is not liable for any response action or cleanup that may be required with respect to any real property pursuant to NRS 445A.300 to 445A.730, inclusive, 445B.100 to 445B.640, inclusive, *and sections 2 to 6, inclusive, of this act*, 459.400 to 459.600, inclusive, or any other applicable provision of law.

(b) Is an innocent purchaser is not liable for any response action or cleanup that may be required with respect to any real property pursuant to NRS 445A.300 to 445A.730, inclusive, 445B.100 to 445B.640, inclusive, *and sections 2 to 6, inclusive, of this act*, 459.400 to 459.600, inclusive, or any other applicable provision of law.

(c) Owns real property that:

(1) Is contiguous to or otherwise similarly situated with respect to; and

(2) Is or may be contaminated by a release or threatened release of a hazardous substance from,

➔ other real property that the person does not own, is not liable for any response action or cleanup that may be required with respect to the release or threatened release, provided that the person meets the requirements set forth in section 107(q)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607(q)(1).

2. A person described in paragraph (a), (b) or (c) of subsection 1 shall report to the Division, in a manner prescribed by the Commission:

(a) Any of the following substances that are found on or at real property owned by the person:

(1) Hazardous substances at or above the required reporting levels designated pursuant to sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9602 and 9603; and

(2) Petroleum products of such type and in such amount as are required by the Division to be reported; and

(b) Any response action or cleanup that has been performed with respect to the real property described in paragraph (a).



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3. The provisions of this section do not otherwise limit the authority of the Administrator, the Commission or the Division to require any person who is responsible for the contamination or pollution of real property, by improperly managing hazardous substances at or on that real property, to perform a response action or cleanup with respect to that real property.

4. If there are costs relating to a response action or cleanup that are incurred and unrecovered by the State of Nevada with respect to real property for which a bona fide prospective purchaser of the real property is not liable pursuant to the provisions of this section, the State of Nevada:

(a) Has a lien against that real property in an amount not to exceed the increase in the fair market value of the real property that is attributable to the response action or cleanup, which increase in fair market value must be measured at the time of the sale or other disposition of the real property; or

(b) May, with respect to those incurred and unrecovered costs and by agreement with the bona fide prospective purchaser of the real property, obtain from that bona fide prospective purchaser:

(1) A lien on any other real property owned by the bona fide prospective purchaser; or

(2) Another form of assurance or payment that is satisfactory to the Administrator.

5. The provisions of this section:

(a) Do not affect the liability in tort of any party; and

(b) Apply only to real property that is acquired on or after the date that is 60 days after May 26, 2003.

6. As used in this section:

(a) "Administrator" means the Administrator of the Division.

(b) "Bona fide prospective purchaser" has the meaning ascribed to it in section 101(40) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601(40).

(c) "Commission" means the State Environmental Commission.

(d) "Division" means the Division of Environmental Protection of the State Department of Conservation and Natural Resources.

(e) "Hazardous substance" has the meaning ascribed to it in NRS 459.620.

(f) "Innocent purchaser" means a person who qualifies for the exemption from liability set forth in section 107(b)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607(b)(3).

(g) "Participant" has the meaning ascribed to it in NRS 459.622.

(h) "Program" means a program of voluntary cleanup and relief from liability set forth in NRS 459.610 to 459.658, inclusive.



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- 1 (i) “Response action” means any action to mitigate, attempt to
2 mitigate or assist in the mitigation of the effects of a leak or spill of
3 or an accident involving a hazardous substance, including, without
4 limitation, any action to:
5 (1) Contain and dispose of the hazardous substance;
6 (2) Clean and decontaminate the area affected by the leak,
7 spill or accident; or
8 (3) Investigate the occurrence of the leak, spill or accident.

