

SENATE BILL NO. 422—SENATOR TITUS

MARCH 19, 2007

Referred to Committee on Natural Resources

SUMMARY—Requires the establishment of a registry of greenhouse gas emissions and an inventory of greenhouse gases released 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 mandate the reporting of all greenhouse gases emitted by each affected unit in this State for inclusion in a registry of greenhouse gas emissions; requiring the State Department of Conservation and Natural Resources to issue a statewide inventory of greenhouse gases released in this State; 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)

Section 5 of this bill requires the Commission to mandate the reporting of greenhouse gases emitted by certain generators of electricity in this State for inclusion in a registry of greenhouse gas emissions and to establish the requirements for participation in the registry. **Section 4** of this bill defines a "greenhouse gas" to mean carbon dioxide, hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons and sulphur hexafluoride. **Section 5** authorizes the Commission to prescribe the requirements and procedures for reporting the emissions of greenhouse gases that must be included in the registry, methods for determining the greenhouse gases that must be reported and methods for independently verifying the information that is reported. The Commission may establish the reporting period, but the period must not exceed 1 year.



Section 6.5 of this bill requires the State Department of Conservation and Natural Resources to issue, at least every 4 years, a statewide inventory of greenhouse gases released in this State. The inventory must include the origins, types and amounts of the greenhouse gases, together with the Department's analysis of those gases, and must be supported with documentation.

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

Section 1. Chapter 445B of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6.5, inclusive, of this act.

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 4. *"Greenhouse gas" means any of the following gases, either alone or in combination:*

1. Carbon dioxide (CO₂);

2. Hydrofluorocarbons;

3. Methane (CH₄);

4. Nitrous oxide (N₂O);

5. Perfluorocarbons; and

6. Sulphur hexafluoride (SF₆).

Sec. 5. 1. *In addition to any regulation adopted pursuant to NRS 445B.210 to prevent, abate and control air pollution, the Commission shall, by regulation:*

(a) Mandate the reporting of all greenhouse gases emitted by each affected unit in this State for inclusion in a registry of greenhouse gas emissions; and

(b) Except as otherwise provided in subsection 3, establish the requirements for participation in the registry.

2. *The regulations may include, without limitation, provisions setting forth:*

(a) The requirements and procedures for reporting emissions of greenhouse gases;

(b) Methods for determining the emissions of greenhouse gases that must be reported for inclusion in the registry;

(c) Methods for independently verifying the information reported for inclusion in the registry; and

(d) The reporting period, except that the period must not exceed 1 year.

3. *The requirements for participation in the registry established pursuant to paragraph (b) of subsection 1 must not prohibit a person who does not own or operate an affected unit from voluntarily participating in the registry.*

4. *As used in this section:*



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(a) "Affected unit" means a unit for the generation of electricity that:

(1) Has a maximum design output capacity of not less than 5 megawatts;

(2) Emits a greenhouse gas; and

(3) Generates electricity for sale.

↪ The term does not include a unit that uses renewable energy, as defined in NRS 704.7811, to generate electricity.

(b) "Registry of greenhouse gas emissions" or "registry" means a repository or ongoing account of verified greenhouse gas emissions.

Sec. 6. (Deleted by amendment.)

Sec. 6.5. 1. The Department shall, not later than December 31, 2008, and at least every 4 years thereafter, issue a statewide inventory of greenhouse gases released in this State.

2. The inventory must include, without limitation:

(a) The origins, types and amounts of those greenhouse gases;

(b) The Department's analysis of the information set forth in paragraph (a); and

(c) Documentation for the information set forth in paragraphs (a) and (b).

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

445B.105 As used in NRS 445B.100 to 445B.640, inclusive, and sections 2 to 6.5, inclusive, of this act, unless the context otherwise requires, the words and terms defined in NRS 445B.110 to 445B.155, inclusive, and section 4 of this act have the meanings ascribed to them in those sections.

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

445B.210 The Commission may:

1. Subject to the provisions of NRS 445B.215, adopt regulations consistent with the general intent and purposes of NRS 445B.100 to 445B.640, inclusive, and sections 2 to 6.5, inclusive, of this act to prevent, abate and control air pollution.

2. Establish standards for air quality.

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

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

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

6. By regulation:

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



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(b) Delete from designation as a hazardous air pollutant any substance which, after October 1, 1993, is deleted from the federal list of hazardous air pollutants pursuant to 42 U.S.C. § 7412(b), based upon the Commission's determination of the extent to 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 6.5, 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 6.5, 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 ~~[H]~~, *and sections 2 to 6.5, 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 ~~[H]~~, *and sections 2 to 6.5, 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 6.5, 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 for purposes of ascertaining compliance with NRS 445B.100 to 445B.640, inclusive ~~H~~, and sections 2 to 6.5, inclusive, of this act.

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

9. Institute proceedings to prevent continued violation of any order issued by the Director and to enforce the provisions of NRS 445B.100 to 445B.640, inclusive ~~H~~, and sections 2 to 6.5, inclusive, of this act.

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

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

Sec. 11. (Deleted by amendment.)

Sec. 12. (Deleted by amendment.)

Sec. 13. (Deleted by amendment.)

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

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

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

(a) To carry out and enforce the provisions of NRS 445B.100 to 445B.640, inclusive, and sections 2 to 6.5, inclusive, of this act and of any regulations adopted pursuant to those sections, including, without limitation, the direct and indirect costs of:

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

(2) Furnishing guidance for compliance with those provisions;

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

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

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

(6) Preparing inventories and tracking emissions;

(7) Performing modeling, analyses and demonstrations; and

(8) Establishing and administering a program for the provision of assistance, pursuant to 42 U.S.C. § 7661f, to small 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 6.5, 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 6.5, 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 6.5, 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 6.5, 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 6.5, 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 6.5, 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 6.5, 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 6.5, 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 6.5, 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 6.5, 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 6.5, 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).

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.



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

3 (i) “Response action” means any action to mitigate, attempt to
4 mitigate or assist in the mitigation of the effects of a leak or spill of
5 or an accident involving a hazardous substance, including, without
6 limitation, any action to:

7 (1) Contain and dispose of the hazardous substance;

8 (2) Clean and decontaminate the area affected by the leak,
9 spill or accident; or

10 (3) Investigate the occurrence of the leak, spill or accident.

11 **Sec. 21.** This act becomes effective on July 1, 2007.

