

SENATE BILL NO. 240—SENATOR MCGINNESS

MARCH 16, 2011

Referred to Committee on Natural Resources

SUMMARY—Makes various changes concerning small exploration projects and small mining operations. (BDR 40-998)

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 mining; providing for the automatic renewal of certain permits required for the operation of small exploration projects and small mining operations; exempting applications for permits for small exploration projects and small mining operations certain provisions governing public hearings; providing that certain small exploration projects and small mining operations are not sources of air contaminants; providing for the commencement of alterations to a source of air contaminant before approval from the Director of the State Department of Conservation and Natural Resources under certain circumstances; exempting certain small exploration projects and small mining operations from the provisions governing mines; expanding the area of “small exploration project” and “small mining operation” from 5 to 10 acres for the purposes of exempting activities conducted on such land from existing provisions governing mining operations and exploration projects; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law sets forth standards governing the control of water pollution and air pollution and the reclamation of land subject to mining operations. (Chapters 445A, 445B and 519A of NRS) This bill revises those standards concerning the permitting and other activities of small exploration projects and small mining operations.

Sections 5 and 12 of this bill make the renewal of a permit for the discharge or injection of fluids through a well and the renewal of a Class II operating permit for



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a small exploration project or a small mining operation automatic provided certain conditions are met.

Section 6 of this bill exempts applications for a permit for a small exploration project or a small mining operation from certain provisions governing hearings.

Section 11 of this bill provides that certain small exploration projects and small mining operations are not a source or indirect source of air contaminant for the purposes of existing law governing air pollution.

Section 13 of this bill exempts certain sources of air contaminant from submitting plans, specifications and other information required by the State Environmental Commission to the Director of the State Department of Conservation and Natural Resources before beginning an alteration to the source.

Section 14 of this bill increases the area of land that is authorized to be disturbed during a small exploration project from 5 to 10 acres for the purpose of exempting activities conducted on such land from existing provisions governing exploration projects.

Section 15 of this bill amends the definition of "small mining operation" by setting the maximum amount of material such an operation is authorized to remove in any calendar year at not more than 80,000 tons and increasing the area of land that such an operation is authorized to disturb from 5 to 10 acres for the purpose of exempting activities conducted on such land from existing provisions governing mining operations.

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

Section 1. Chapter 445A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *"Small exploration project" has the meaning ascribed to it in NRS 519A.110.*

Sec. 3. *"Small mining operation" has the meaning ascribed to it in NRS 519A.120.*

Sec. 4. NRS 445A.310 is hereby amended to read as follows:
445A.310 As used in NRS 445A.300 to 445A.730, inclusive, unless the context otherwise requires, the words and terms defined in NRS 445A.315 to 445A.420, inclusive, *and sections 2 and 3 of this act* have the meanings ascribed to them in those sections.

Sec. 5. NRS 445A.495 is hereby amended to read as follows:
445A.495 **1.** The Department may issue permits for fixed terms not to exceed 5 years, but a permit to operate a package plant for sewage treatment must be reviewed annually by the Department. ~~It~~ *Except as otherwise provided in subsection 2, in* compliance with the regulations adopted by the Commission, the Department may issue a new permit upon expiration of an existing permit if:

~~It~~ *(a)* The holder of the permit is in full or substantial compliance with all the requirements and schedules of compliance of the expired permit;

~~It~~ *(b)* The Department has current information on the nature and frequency of the discharge or injection of fluids through a well



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1 by a holder of a permit, either pursuant to the submission of new
2 forms and applications or pursuant to continuing observation of
3 records and reports submitted to the Department by the holder of the
4 permit; and

5 ~~B-1~~ (c) The discharge or injection of fluids through a well is
6 consistent with applicable effluent limitations, standards of water
7 quality and other applicable requirements set forth in NRS
8 445A.300 to 445A.730, inclusive.

9 **2. Except as otherwise provided in NRS 445A.600, a permit**
10 **for a small exploration project or a small mining operation is**
11 **automatically renewed upon the payment of the applicable fees**
12 **and provided the Department receives written notification that no**
13 **changes to the small exploration project or small mining operation**
14 **are contemplated at the time of the automatic renewal.**

15 **Sec. 6.** NRS 445A.595 is hereby amended to read as follows:

16 445A.595 **1.** The Commission shall provide by regulation:

17 ~~H-1~~ (a) An opportunity for each permit applicant, interested
18 agency, city, county or irrigation district located downstream from
19 the point of discharge, or any person to request a public hearing
20 conducted by the Director with respect to each permit application;
21 and

22 ~~H-2~~ (b) For public notice of the hearing, at least 30 days before
23 the date of the hearing.

24 ~~H-3~~ **2.** The provisions of this section do not apply to an
25 application for ~~H-4~~ :

26 (a) A temporary permit issued pursuant to NRS 445A.485 ~~H-5~~ ;
27 or

28 (b) **A permit issued for a small exploration project or small**
29 **mining operation.**

30 **Sec. 7.** Chapter 445B of NRS is hereby amended by adding
31 thereto the provisions set forth as sections 8 and 9 of this act.

32 **Sec. 8. "Small exploration project" has the meaning ascribed**
33 **to it in NRS 519A.110.**

34 **Sec. 9. "Small mining operation" has the meaning ascribed**
35 **to it in NRS 519A.120.**

36 **Sec. 10.** NRS 445B.105 is hereby amended to read as follows:

37 445B.105 As used in NRS 445B.100 to 445B.640, inclusive,
38 unless the context otherwise requires, the words and terms defined
39 in NRS 445B.110 to 445B.155, inclusive, **and sections 8 and 9 of**
40 **this act** have the meanings ascribed to them in those sections.

41 **Sec. 11.** NRS 445B.155 is hereby amended to read as follows:

42 445B.155 **1.** "Source" means any property, real or personal,
43 which directly emits or may emit any air contaminant.

44 **2.** "Indirect source" means any property or facility that has or
45 solicits secondary or adjunctive activity which emits or may emit



1 any air contaminant for which there is an ambient air quality
2 standard, notwithstanding that such property or facility may not
3 itself possess the capability of emitting such air contaminants.
4 Indirect sources include, but are not limited to:

- 5 (a) Highways and roads;
- 6 (b) Parking facilities;
- 7 (c) Retail, commercial and industrial facilities;
- 8 (d) Recreation, amusement, sports and entertainment facilities;
- 9 (e) Airports;
- 10 (f) Office and government buildings;
- 11 (g) Apartment and condominium buildings;
- 12 (h) Educational facilities; and
- 13 (i) Other such property or facilities which will result in
14 increased air contaminant emissions from motor vehicles or other
15 stationary sources.

16 **3. The terms "source" and "indirect source" do not include a**
17 **small exploration project or a small mining operation whose**
18 **emissions are limited to:**

19 (a) **Particulate matter in the atmosphere with an aerodynamic**
20 **diameter less than or equal to a nominal 10 micrometers as**
21 **measured by an approved reference method or equivalent method**
22 **based on 40 C.F.R. Part 50, Appendix J, and designated in**
23 **accordance with 40 C.F.R. Part 53;**

24 (b) **An air contaminant associated with the combustion of low-**
25 **sulfur diesel fuel regulated by the United States Environmental**
26 **Protection Agency; or**

27 (c) **Natural gas used for the drying of earthen material, but not**
28 **for calcination.**

29 **Sec. 12.** NRS 445B.300 is hereby amended to read as follows:

30 445B.300 1. The Commission shall by regulation:

31 (a) Require the person operating or responsible for the existence
32 of each source of air contaminant, generally or within a specified
33 class or classes, to apply for and obtain an operating permit for the
34 source.

35 (b) Require that written notice be given to the Director before
36 the construction, installation, alteration or establishment of any
37 source of air contaminant or of any specified class or classes of such
38 sources, or the alteration of any device intended primarily to prevent
39 or reduce air pollution. If within the time prescribed by regulation
40 the Director determines that:

41 (1) The proposed construction, installation, alteration or
42 establishment will not be in accordance with the provisions of the
43 plans, specifications and other design material required to be
44 submitted under NRS 445B.100 to 445B.640, inclusive, or
45 applicable regulations; or



(2) The design material or the construction itself is of such a nature that it patently cannot bring such source into compliance with NRS 445B.100 to 445B.640, inclusive, or applicable regulations, ➔ the Director shall issue an order prohibiting the construction, installation, alteration or establishment of the source or sources of air contaminant.

2. The Commission shall by regulation provide for:

(a) ~~The~~ *Except as otherwise provided in subsection 3, the* issuance, renewal, modification, revocation and suspension of operating permits, and charge appropriate fees for their issuance in an amount sufficient to pay the expenses of administering NRS 445B.100 to 445B.640, inclusive, and any regulations adopted pursuant to those sections.

(b) The issuance of authorizations for the issuance of building permits pursuant to paragraph (a) of subsection ~~2~~ 4 of NRS 445B.320.

3. An operating permit for a small exploration project or a small mining operation which is not subject to the requirements of 42 U.S.C. §§ 7661 et seq. is automatically renewed upon payment of the applicable fees and provided the Department receives written notification that no changes to the existing small exploration project or small mining operation are contemplated at the time of automatic renewal.

~~3~~ 4. Any failure of the Commission or the Department to issue a regulation or order to prohibit any act does not relieve the person so operating from any legal responsibility for the construction, operation or existence of the source of air contaminant.

~~4~~ 5. All administrative fees collected by the Commission pursuant to subsection 2 must be accounted for separately and deposited in the State General Fund for credit to the Account for the Management of Air Quality. This subsection does not apply to any fees collected by political subdivisions or their agencies.

Sec. 13. NRS 445B.320 is hereby amended to read as follows:

445B.320 1. ~~The~~ *Except as otherwise provided in subsection 2, the* Commission shall require, with respect to all sources of air contaminant, including indirect sources, that plans, specifications and such other information as the Commission may direct be submitted to the Director not later than a specified interval before the construction or alteration of a building or other structure if such construction or alteration includes the establishment or alteration of a source or indirect source of air contaminant.

2. *Any alteration to an existing source may begin before plans, specifications and such other information as the Commission may direct are submitted to the Director if:*



1 (a) During any calendar year, the existing permitted source
2 processes not more than 80,000 tons of earthen material
3 consisting primarily of industrial minerals;

4 (b) The required plans, specifications and other information
5 are submitted to the Director not later than 30 days after
6 completion of the alteration; and

7 (c) The plans, specifications and other information submitted
8 demonstrate, upon review by the Director, that the alterations will
9 not cause the source to exceed its allowable emissions.

10 3. If the review of the plans, specifications and other
11 information submitted to the Director pursuant to subsection 1
12 demonstrates that the completed alteration has caused or may
13 cause the source to exceed its allowable emissions, the Director
14 shall issue a notice of regulatory action pursuant to NRS
15 445B.330. Within 30 days after the date of the notice, the owner or
16 operator of the source shall comply with the permitted allowable
17 emissions, unless the owner or operator wishes to appeal the
18 regulatory action.

19 4. The local government authority, if any, responsible for
20 issuing any required building permit shall not issue such building
21 permit:

22 (a) Until the Department has given its authorization therefor,
23 pursuant to regulation of the Commission.

24 (b) If a stop order prohibiting such construction or alteration has
25 been issued.

26 **Sec. 14.** NRS 519A.110 is hereby amended to read as follows:

27 519A.110 "Small exploration project" means an exploration
28 project which is limited to a surface disturbance of not more than ~~5~~
29 10 acres in any calendar year. To determine the area of the surface
30 disturbed, all land disturbed and left unreclaimed by an operator
31 within a 1-mile radius of the center of the project must be
32 considered.

33 **Sec. 15.** NRS 519A.120 is hereby amended to read as follows:

34 519A.120 "Small mining operation" means a person *who does*
35 *not remove more than 80,000 tons of material from the earth in*
36 *any calendar year and* who disturbs less than ~~5~~ 10 acres of land in
37 any calendar year. To determine the area of the surface disturbed, all
38 land disturbed and left unreclaimed by an operator within a 1-mile
39 radius of the center of the project must be considered.

