

SENATE BILL NO. 298—SENATOR MCGINNESS

MARCH 21, 2011

Referred to Committee on Natural Resources

SUMMARY—Enacts provisions governing noxious odors.
(BDR 40-1077)

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 odors; authorizing a person to submit a written complaint to the Director of the State Department of Conservation and Natural Resources alleging the existence of a noxious odor; authorizing the Director to conduct an investigation concerning the existence and cause of the noxious odor; authorizing the State Environmental Commission to order the abatement of the noxious odor under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for regulation by the State Environmental Commission and the State Department of Conservation and Natural Resources of all direct and indirect sources of air contaminants and air pollution in this State. (NRS 445B.100-445B.640) **Section 1** of this bill authorizes any person to submit a written complaint to the Director of the Department alleging the existence of a noxious odor. The term "noxious odor" is defined in **section 1** to mean any odor which is objectionable to the senses of an ordinary person and interferes with the comfortable enjoyment of life or property in any usual place of occupancy. **Section 1** requires the Director to serve a written notice of the complaint upon the person allegedly causing the noxious odor and authorizes the Director to conduct an investigation concerning the existence and cause of the noxious odor. **Section 1** authorizes the written notice to include an order requiring a person to take corrective action and provides that the order becomes final within 10 days unless the person requests a hearing before the Commission. Regardless of whether an order for corrective action is issued or if any ordered corrective action is not taken, **section 1** authorizes the Director to require the person allegedly causing the noxious odor to appear at a hearing before the Commission. If, after conducting the hearing, the Commission determines that the person is responsible for causing the noxious odor, **section 1** authorizes the Commission to order the person to abate



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the noxious odor. **Sections 2-11** of this bill ensure that the provisions of **section 1** are included within certain existing provisions governing the emission of air contaminants and air pollution, including the provisions of **section 8**, which authorize the Director to request the Attorney General to apply to a district court in this State for an order enjoining a person from violating an order of the Commission or Director or requiring the person to comply with any such order.

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 a new section to read as follows:

1. Any person may submit a written complaint to the Director alleging the existence of a noxious odor. Within 10 days after receiving the complaint, the Director shall cause a written notice to be served upon the person allegedly causing the noxious odor. The notice must include:

(a) The facts set forth in the written complaint concerning the existence and cause of the noxious odor; and

(b) Any other information specified by the Director concerning the noxious odor.

2. The Director may conduct an investigation concerning the existence and cause of any noxious odor for which he or she receives a written complaint pursuant to subsection 1.

3. A written notice served pursuant to subsection 1 may include an order to take corrective action within a reasonable period set forth in the notice. Such an order becomes final unless, within 10 days after service of the written notice, a person named in the order requests a hearing before the Commission.

4. With or without the issuance of an order pursuant to subsection 3, or if any required corrective action is not taken within the period set forth in the notice, the Director may require the person allegedly causing the noxious odor to appear at a hearing before the Commission at a specified time, date and place. If, after conducting the hearing, the Commission determines that the person is responsible for causing the noxious odor, the Commission may order the person to abate the noxious odor.

5. As used in this section, "noxious odor" means any odor which:

(a) Is objectionable to the senses of an ordinary person; and

(b) Interferes with the comfortable enjoyment of life or property in any usual place of occupancy.

Sec. 2. NRS 445B.100 is hereby amended to read as follows:

445B.100 1. It is the public policy of the State of Nevada and the purpose of NRS 445B.100 to 445B.640, inclusive, *and section 1*



1 *of this act* to achieve and maintain levels of air quality which will
2 protect human health and safety, prevent injury to plant and animal
3 life, prevent damage to property, and preserve visibility and scenic,
4 esthetic and historic values of the State.

5 2. It is the intent of NRS 445B.100 to 445B.640, inclusive, *and*
6 *section 1 of this act* to:

7 (a) Require the use of reasonably available methods to prevent,
8 reduce or control air pollution throughout the State of Nevada;

9 (b) Maintain cooperative programs between the State and its
10 local governments; and

11 (c) Facilitate cooperation across jurisdictional lines in dealing
12 with problems of air pollution not confined within a single
13 jurisdiction.

14 3. The quality of air is declared to be affected with the public
15 interest, and NRS 445B.100 to 445B.640, inclusive, *and section 1*
16 *of this act* are enacted in the exercise of the police power of this
17 State to protect the health, peace, safety and general welfare of its
18 people.

19 4. It is also the public policy of this State:

20 (a) To provide for the integration of all programs for the
21 prevention of accidents in this State involving chemicals, including,
22 without limitation, accidents involving hazardous air pollutants,
23 highly hazardous chemicals, highly hazardous substances and
24 extremely hazardous substances; and

25 (b) Periodically to retire a portion of the emission credits or
26 allocations specified in NRS 445B.235 that may otherwise be
27 available for banking or for sale pursuant to that section.

28 **Sec. 3.** NRS 445B.105 is hereby amended to read as follows:

29 445B.105 As used in NRS 445B.100 to 445B.640, inclusive,
30 *and section 1 of this act*, unless the context otherwise requires, the
31 words and terms defined in NRS 445B.110 to 445B.155, inclusive,
32 have the meanings ascribed to them in those sections.

33 **Sec. 4.** NRS 445B.210 is hereby amended to read as follows:

34 445B.210 The Commission may:

35 1. Subject to the provisions of NRS 445B.215, adopt
36 regulations consistent with the general intent and purposes of NRS
37 445B.100 to 445B.640, inclusive, *and section 1 of this act* to
38 prevent, abate and control air pollution.

39 2. Establish standards for air quality.

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

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

44 5. Establish such requirements for the control of emissions as
45 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

(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 section 1 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. 5. 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 section 1 of this act*, the Commission, in addition to any other action which may be necessary or appropriate to carry out 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. 6. 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 section 1 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 section 1 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,



1 inclusive, *and section 1 of this act* the installation, alteration or
2 establishment of any equipment, device or other article capable of
3 causing air pollution.

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

7 7. Enter into and inspect at any reasonable time any premises
8 containing an air contaminant source or a source under construction
9 for purposes of ascertaining compliance with NRS 445B.100 to
10 445B.640, inclusive ~~§~~, *and section 1 of this act*.

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

13 9. Institute proceedings to prevent continued violation of any
14 order issued by the Director and to enforce the provisions of NRS
15 445B.100 to 445B.640, inclusive ~~§~~, *and section 1 of this act*.

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

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

21 **Sec. 7.** NRS 445B.240 is hereby amended to read as follows:

22 445B.240 1. Any duly authorized officer, employee or
23 representative of the Department may enter and inspect any
24 property, premises or place on or at which an air contaminant source
25 is located or is being constructed, installed or established at any
26 reasonable time for the purpose of ascertaining the state of
27 compliance with NRS 445B.100 to 445B.640, inclusive, and *section*
28 *1 of this act and* rules and regulations in force pursuant thereto.

29 2. No person shall:

30 (a) Refuse entry or access to any authorized representative of the
31 Department who requests entry for purposes of inspection, as
32 provided in this section, and who presents appropriate credentials.

33 (b) Obstruct, hamper or interfere with any such inspection.

34 3. If requested, the owner or operator of the premises shall
35 receive a report setting forth all facts found which relate to
36 compliance status.

37 **Sec. 8.** NRS 445B.460 is hereby amended to read as follows:

38 445B.460 1. If, in the judgment of the Director, any person is
39 engaged in or is about to engage in any act or practice which
40 constitutes or will constitute a violation of any provision of NRS
41 445B.100 to 445B.640, inclusive, *and section 1 of this act* or any
42 rule, regulation, order or operating permit issued pursuant to NRS
43 445B.100 to 445B.640, inclusive, *and section 1 of this act*, the
44 Director may request that the Attorney General apply to the district
45 court for an order enjoining the act or practice, or for an order



1 directing compliance with any provision of NRS 445B.100 to
2 445B.640, inclusive, *and section 1 of this act* or any rule,
3 regulation, order or operating permit issued pursuant to NRS
4 445B.100 to 445B.640, inclusive ~~[]~~, *and section 1 of this act*.

5 2. If, in the judgment of the control officer of a local air
6 pollution control board, any person is engaged in or is about to
7 engage in such an act or practice, the control officer may request
8 that the district attorney of the county in which the act or practice is
9 being engaged in or is about to be engaged in apply to the district
10 court for such an order.

11 3. Upon a showing by the Director or the control officer that a
12 person has engaged in or is about to engage in any such act or
13 practice, a permanent or temporary injunction, restraining order or
14 other appropriate order may be granted by the court.

15 **Sec. 9.** NRS 445B.590 is hereby amended to read as follows:

16 445B.590 1. The Account for the Management of Air Quality
17 is hereby created in the State General Fund, to be administered by
18 the Department.

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

21 (a) To carry out and enforce the provisions of NRS 445B.100 to
22 445B.640, inclusive, and *section 1 of this act and* of any regulations
23 adopted pursuant to those sections, including, without limitation, the
24 direct and indirect costs of:

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

27 (2) Furnishing guidance for compliance with those
28 provisions;

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

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

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

34 (6) Preparing inventories and tracking emissions;

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

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

39 (b) In any other manner required as a condition to the receipt of
40 federal money for the purposes of NRS 445B.100 to 445B.640,
41 inclusive ~~[]~~, *and section 1 of this act*; and

42 (c) For any other purpose authorized by the Legislature.

43 3. All interest earned on the money in the Account for the
44 Management of Air Quality must be credited to the Account. Claims



1 against the Account for the Management of Air Quality must be
2 paid as other claims against the State are paid.

3 **Sec. 10.** NRS 445B.600 is hereby amended to read as follows:

4 445B.600 NRS 445B.100 to 445B.595, inclusive, *and section*
5 *1 of this act* does not abridge, limit, impair, create, enlarge or
6 otherwise affect substantively or procedurally the right of any
7 person to damages or other relief on account of injury to persons or
8 property and to maintain any action or other appropriate proceeding
9 therefor in the courts of this State or the courts of the United States
10 on a tort claim against the United States or a federal agency as
11 authorized by federal statutes.

12 **Sec. 11.** NRS 459.930 is hereby amended to read as follows:

13 459.930 1. Notwithstanding any other provision of law to the
14 contrary and regardless of whether he or she is a participant in a
15 program, a person who:

16 (a) Is a bona fide prospective purchaser is not liable for any
17 response action or cleanup that may be required with respect to any
18 real property pursuant to NRS 445A.300 to 445A.730, inclusive,
19 445B.100 to 445B.640, inclusive, *and section 1 of this act*, 459.400
20 to 459.600, inclusive, or any other applicable provision of law.

21 (b) Is an innocent purchaser is not liable for any response action
22 or cleanup that may be required with respect to any real property
23 pursuant to NRS 445A.300 to 445A.730, inclusive, 445B.100 to
24 445B.640, inclusive, *and section 1 of this act*, 459.400 to 459.600,
25 inclusive, or any other applicable provision of law.

26 (c) Owns real property that:

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

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

31 ➤ other real property that the person does not own, is not liable for
32 any response action or cleanup that may be required with respect to
33 the release or threatened release, provided that the person meets the
34 requirements set forth in section 107(q)(1) of the Comprehensive
35 Environmental Response, Compensation, and Liability Act of 1980,
36 42 U.S.C. § 9607(q)(1).

37 2. A person described in paragraph (a), (b) or (c) of subsection
38 1 shall report to the Division, in a manner prescribed by the
39 Commission:

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

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



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(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



1 Comprehensive Environmental Response, Compensation, and
2 Liability Act of 1980, 42 U.S.C. § 9607(b)(3).

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

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

6 (i) "Response action" means any action to mitigate, attempt to
7 mitigate or assist in the mitigation of the effects of a leak or spill of
8 or an accident involving a hazardous substance, including, without
9 limitation, any action to:

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

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

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

14 **Sec. 12.** This act becomes effective on July 1, 2011.

