

SENATE BILL NO. 438—COMMITTEE ON
COMMERCE, LABOR AND ENERGY

MARCH 23, 2015

Referred to Committee on Natural Resources

SUMMARY—Provides for the development and implementation of a state emissions plan to reduce certain carbon-dioxide emissions. (BDR 40-992)

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 the regulation of air pollution; requiring the State Department of Conservation and Natural Resources to develop and adopt a proposed state emissions plan for the purpose of complying with future requirements of the federal Clean Air Act relating to the reduction in certain carbon-dioxide emissions; requiring the Legislature or the Legislative Commission, as applicable, to approve or disapprove the plan; requiring the Department to enforce the plan upon approval of the plan by the United States Environmental Protection Agency; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the regulation of air pollution by the State Department of Conservation and Natural Resources and the State Environmental Commission. (Chapter 445B of NRS) Currently, the United States Environmental Protection Agency (EPA) is in the process of adopting rules and regulations that would require states to develop and submit to the EPA for approval a state plan to reduce carbon-dioxide emissions from existing power plants. (Section 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d)) **Sections 2-10** of this bill provide for the development and implementation of a state emissions plan for the purposes of compliance with any such rules and regulations adopted by the EPA. **Section 6** requires the Department to prepare an advisory report on the implementation of a state emissions plan and include a proposed state emissions plan as part of the report. The report must include an assessment of the impact of the plan on electric utilities, retail customers and the economy of this State. **Section 7** requires the Department to conduct a hearing for the purpose of adopting a proposed state



emissions plan. **Section 7** further requires the Department, upon adopting a proposed state emissions plan, to transmit the plan to the Legislature or the Legislative Commission, as applicable. **Section 8** requires the Legislature or the Legislative Commission to approve or disapprove the plan. Upon approval of the plan pursuant to **section 8**, **section 9** requires the Department to submit the plan to the EPA for approval. Upon approval of the plan by the EPA, **section 9** requires the Department to enforce the plan to the extent authorized by law or regulation.

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 10, inclusive, of this act.

Sec. 2. *As used in sections 2 to 10, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3, 4 and 5 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Electric utility” means any business that provides electric service to customers in this State and that owns, in whole or in part, a fossil fuel-fired electric generating plant.*

Sec. 4. *“Fossil fuel-fired electric generating plant” means an electric generating plant which utilizes a fossil fuel to produce electricity and which is owned, in whole or in part, by an electric utility.*

Sec. 5. *“State emissions plan” means a plan developed and approved pursuant to sections 2 to 10, inclusive, of this act for the purpose of reducing carbon dioxide emissions from sources in this State in accordance with section 111(d) of the Federal Act, 42 U.S.C. § 7411(d) and any rules or regulations adopted pursuant thereto.*

Sec. 6. 1. *The Department shall prepare an advisory report on the implementation of a state emissions plan that assesses the effect of implementing the plan on electric utilities, the retail customers of electric utilities and the economy of this State. The advisory report must include, without limitation, a proposed state emissions plan and an assessment of:*

(a) The ability of electric utilities in the State to provide affordable electricity through diversified sources of electricity generation.

(b) The net gain or loss of electric generating capacity within the State as the result of retiring fossil fuel-fired electric generating plants or the commencement of the operation of electric generating plants that use alternative fuels or renewable energy.



(c) Any stranded investments in fossil fuel-fired electric generating plants and related infrastructure.

(d) The amount of investment necessary to offset the retirement of fossil fuel-fired electric generating plants and to maintain adequate margins of reserve generation capacity.

(e) Potential risks to the reliability of electric service in this State and the adequacy of resources and any constraints on transmission.

(f) The amount by which retail prices for electricity may increase.

(g) The effect on retail customers of electric utilities in this State, including, without limitation, any disproportionate effect resulting from any forecasted increase in the costs of electric service on middle- and low-income households.

(h) The effect on employment in this State.

(i) The effect on economic development in this State.

(j) The effect on the competitive economic position of the State relative to contiguous states.

(k) The fiscal effect on the State and local governments resulting from any changes in revenues.

(l) Any legislation that may be necessary to implement and enforce a state emissions plan.

2. Upon completion of the advisory report, the Department shall provide a copy of the advisory report to:

(a) Each electric utility that would be affected by the requirements of a proposed state emissions plan;

(b) The Department of Health and Human Services;

(c) The Public Utilities Commission of Nevada;

(d) The Consumer's Advocate of the Bureau of Consumer Protection in the Office of the Attorney General;

(e) The Director of the Office of Energy;

(f) Any other state or local agency as determined by the Department; and

(g) Any other person, upon request.

3. Any entity or person, including, without limitation, any entity or person that receives or obtains a copy of the advisory report pursuant to subsection 2 may submit to the Department any recommendations in writing with respect to the findings of the advisory report and the proposed state emissions plan.

Sec. 7. 1. The Department shall, upon completion of an advisory report pursuant to section 6 of this act, conduct a hearing for the purpose of adopting the proposed state emissions plan included in the advisory report.



2. The Department shall, not later than 90 days before conducting the hearing, provide written notice of the date and location of the hearing to:

(a) Each electric utility that would be affected by the requirements of a proposed state emissions plan;

(b) The Department of Health and Human Services;

(c) The Public Utilities Commission of Nevada;

(d) The Consumer's Advocate of the Bureau of Consumer Protection in the Office of the Attorney General;

(e) The Director of the Office of Energy; and

(f) Any entity or person who submitted recommendations pursuant to subsection 3 of section 6 of this act.

3. The Department shall issue a written decision adopting, disapproving or amending and adopting a proposed state emissions plan not later than 30 days after the conclusion of the hearing.

4. The Department shall, not later than 10 days after adopting a proposed state emissions plan, transmit the proposed state emissions plan to the Director of the Legislative Counsel Bureau for transmittal to the Legislature if the Legislature is in session, or to the Legislative Commission if the Legislature is not in session.

Sec. 8. The Legislature or the Legislative Commission, as applicable, shall, upon receiving a proposed state emissions plan pursuant to subsection 4 of section 7 of this act, approve or disapprove the plan. If the Legislature or the Legislative Commission disapproves a proposed state emissions plan, the Legislature or the Legislative Commission, as applicable, may submit to the Department any recommendations for revisions to the plan.

Sec. 9. 1. If the Legislature or the Legislative Commission approves a proposed state emissions plan pursuant to section 8 of this act, the Department shall submit the state emissions plan to the United States Environmental Protection Agency for approval in accordance with the applicable provisions of the Federal Act.

2. The Department shall, upon receiving notice from the United States Environmental Protection Agency that the Agency has approved a proposed state emissions plan, enforce the state emissions plan to the extent authorized by law or regulation.

Sec. 10. The Department may adopt regulations to carry out the provisions of sections 2 to 10, inclusive, of this act, and to implement and enforce a state emissions plan that has been approved by the United States Environmental Protection Agency.



1 **Sec. 11.** NRS 445B.100 is hereby amended to read as follows:
2 445B.100 1. It is the public policy of the State of Nevada and
3 the purpose of NRS 445B.100 to 445B.640, inclusive, *and sections*
4 *2 to 10, inclusive, of this act* to achieve and maintain levels of air
5 quality which will protect human health and safety, prevent injury to
6 plant and animal life, prevent damage to property, and preserve
7 visibility and scenic, esthetic and historic values of the State.

8 2. It is the intent of NRS 445B.100 to 445B.640, inclusive, *and*
9 *sections 2 to 10, inclusive, of this act* to:

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

12 (b) Maintain cooperative programs between the State and its
13 local governments; and

14 (c) Facilitate cooperation across jurisdictional lines in dealing
15 with problems of air pollution not confined within a single
16 jurisdiction.

17 3. The quality of air is declared to be affected with the public
18 interest, and NRS 445B.100 to 445B.640, inclusive, *and sections 2*
19 *to 10, inclusive, of this act* are enacted in the exercise of the police
20 power of this State to protect the health, peace, safety and general
21 welfare of its people.

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

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

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

31 **Sec. 12.** NRS 445B.105 is hereby amended to read as follows:

32 445B.105 As used in NRS 445B.100 to 445B.640, inclusive,
33 *and sections 2 to 10, inclusive, of this act*, unless the context
34 otherwise requires, the words and terms defined in NRS 445B.110
35 to 445B.155, inclusive, have the meanings ascribed to them in those
36 sections.

37 **Sec. 13.** NRS 445B.230 is hereby amended to read as follows:

38 445B.230 The Department shall:

39 1. Make such determinations and issue such orders as may be
40 necessary to implement the purposes of NRS 445B.100 to
41 445B.640, inclusive ~~H~~, *and sections 2 to 10, inclusive, of this act*.

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

44 3. Cooperate and contract with other governmental agencies,
45 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 10, 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 10, 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 10, 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 10, 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. 14. NRS 445B.235 is hereby amended to read as follows:

445B.235 1. In carrying out the purposes of NRS 445B.100 to 445B.640, inclusive, *and sections 2 to 10, inclusive, of this act*, the Department may:

(a) Collect money from the sale of emission credits or allocations.

(b) 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.

(c) On behalf of this State, apply for and receive money made available to the State for programs from any private source or from any agency of the Federal Government under the Federal Act. All money received from any federal agency or private source as provided in this section must be paid into the State Treasury and must be expended, under the direction of the Department, solely for the purpose for which the grant has been made.



(d) Certify to the appropriate federal authority that facilities are in conformity with the state program and requirements for control of air pollution, or will be in conformity with the state program and requirements for control of air pollution if such facility is constructed and operated in accordance with the application for certification.

(e) Develop measures for control of air pollution originating in the State.

2. All money collected by the Department pursuant to paragraph (a) of subsection 1 must be deposited in the State General Fund for credit to the Account for the Management of Air Quality.

3. The Department shall:

(a) Develop proposed regulations establishing requirements for public participation in the determination by the Department of the amount of emission credits or allocations that are available for sale pursuant to paragraph (a) of subsection 1; and

(b) Recommend that the Commission adopt the proposed regulations pursuant to NRS 445B.210.

Sec. 15. NRS 445B.240 is hereby amended to read as follows:

445B.240 1. Any duly authorized officer, employee or representative of the Department may enter and inspect any property, premises or place on or at which an air contaminant source is located or is being constructed, installed or established at any reasonable time for the purpose of ascertaining the state of compliance with NRS 445B.100 to 445B.640, inclusive, *and sections 2 to 10, inclusive, of this act* and rules and regulations in force pursuant thereto.

2. No person shall:

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

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

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

Sec. 16. NRS 445B.330 is hereby amended to read as follows:

445B.330 When the Department takes any regulatory action, under the provisions of NRS 445B.100 to 445B.640, inclusive, *and sections 2 to 10, inclusive, of this act* or under any rule, regulation, order or standard based thereon, it shall give reasonable notice to all parties by certified mail, which notice shall state the legal authority, jurisdiction and reasons for the action taken.

Sec. 17. NRS 445B.460 is hereby amended to read as follows:

445B.460 1. If, in the judgment of the Director, any person is engaged in or is about to engage in any act or practice which



constitutes or will constitute a violation of any provision of NRS 445B.100 to 445B.640, inclusive, *and sections 2 to 10, inclusive, of this act* or any rule, regulation, order or operating permit issued pursuant to NRS 445B.100 to 445B.640, inclusive, *and sections 2 to 10, inclusive, of this act*, the Director may request that the Attorney General apply to the district court for an order enjoining the act or practice, or for an order directing compliance with any provision of NRS 445B.100 to 445B.640, inclusive, *and sections 2 to 10, inclusive, of this act* or any rule, regulation, order or operating permit issued pursuant to NRS 445B.100 to 445B.640, inclusive ~~H~~, *and sections 2 to 10, inclusive, of this act*.

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

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

Sec. 18. NRS 445B.470 is hereby amended to read as follows:

445B.470 1. A person shall not knowingly:

(a) Violate any applicable provision, the terms or conditions of any permit or any provision for the filing of information;

(b) Fail to pay any fee;

(c) Falsify any material statement, representation or certification in any notice or report; or

(d) Render inaccurate any monitoring device or method, ~~↪ required pursuant to the provisions of NRS 445B.100 to 445B.450, inclusive, or 445B.470 to~~ 445B.640, inclusive, *and sections 2 to 10, inclusive, of this act* or any regulation adopted pursuant to those provisions.

2. Any person who violates any provision of subsection 1 shall be punished by a fine of not more than \$10,000 for each day of the violation.

3. The burden of proof and degree of knowledge required to establish a violation of subsection 1 are the same as those required by 42 U.S.C. § 7413(c), as that section existed on October 1, 1993.

4. If, in the judgment of the Director of the Department or the Director's designee, any person is engaged in any act or practice which constitutes a criminal offense pursuant to NRS 445B.100 to 445B.640, inclusive, *and sections 2 to 10, inclusive, of this act*, the Director of the Department or the designee may request that the Attorney General or the district attorney of the county in which the



criminal offense is alleged to have occurred institute by indictment or information a criminal prosecution of the person.

5. If, in the judgment of the control officer of a local air pollution control board, any person is engaged in such an act or practice, the control officer may request that the district attorney of the county in which the criminal offense is alleged to have occurred institute by indictment or information a criminal prosecution of the person.

Sec. 19. NRS 445B.540 is hereby amended to read as follows:

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

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

Sec. 20. 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:

(a) To carry out and enforce the provisions of NRS 445B.100 to 445B.640, inclusive, *and sections 2 to 10, 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;

(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 ~~H~~, *and sections 2 to 10, inclusive, of this act*; and

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

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. 21. 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 10, inclusive, of this act*, NRS 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 sections.

Sec. 22. 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 10, inclusive, of this act* and the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 et seq.

Sec. 23. This act becomes effective:

1. Upon passage and approval for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this section; and

2. On October 1, 2015, for all other purposes.

