

**MINUTES OF THE
SENATE COMMITTEE ON NATURAL RESOURCES**

**Eighty-first Session
May 27, 2021**

The Senate Committee on Natural Resources was called to order by Chair Fabian Donate at 3:34 p.m. on Thursday, May 27, 2021, Online and in Room 2144 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Fabian Donate, Chair
Senator Melanie Scheible, Vice Chair
Senator Chris Brooks
Senator Pete Goicoechea

COMMITTEE MEMBERS ABSENT:

Senator Ira Hansen (Excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Tracy Brown-May, Assembly District No. 42

STAFF MEMBERS PRESENT:

Jennifer Ruedy, Policy Analyst
Allan Amburn, Counsel
Christine Miner, Committee Secretary

OTHERS PRESENT:

Brooke Coleman, Executive Director, Advanced Biofuels Business Council
Cadence Matijevich, Administrator, Division of Consumer Equitability, State
Department of Agriculture
Matthew Walker, New Fuels Alliance
Jimmy Lau, Biotechnology Innovation Organization
Michael Walz, Director of State Policy, POET
Amy Davis, Novozymes

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Elliot Malin, Nevada Petroleum Marketers & Convenience Store Association
Greg Lovato, Administrator, Division of Environmental Protection, State
Department of Conservation and Natural Resources
Peter Krueger, Nevada Petroleum Marketers & Convenience Store Association

CHAIR DONATE:

We will open the hearing on Assembly Bill (A.B.) 411.

ASSEMBLY BILL 411 (1st Reprint): Makes changes to provisions governing fuel.
(BDR 51-1022)

ASSEMBLYWOMAN TRACY BROWN-MAY (Assembly District No. 42):

Assembly Bill 411 makes changes to *Nevada Revised Statutes* (NRS) to require the State Board of Agriculture to allow, by regulation, the sale of fuel containing up to 15 percent ethanol by volume, also known as E15 fuel. Gasoline being sold now is 10 percent ethanol by volume. The bill does not require retailers to sell E15 fuel nor does it modify vehicles for sale in Nevada. It enables another option of fuel to be available to consumers.

Nevada's State Department of Agriculture and Division of Environmental Protection (NDEP) have been involved in discussions regarding this topic.

BROOKE COLEMAN (Executive Director, Advanced Biofuels Business Council):

The Advanced Biofuels Business Council represents leaders in the effort to commercialize advanced low-carbon biofuels in the Country. Assembly Bill 411 will bring Nevada in alignment with the majority of the Nation. The E15 fuel is offered to consumers in 30 states without issue. It is legal for use in more than 45 states. It is a road-tested product with many benefits. American drivers have logged more than 17 billion miles using E15 fuel. It is a well-tested product with no vehicle or fuel equipment issues.

Newer vehicles account for more than 95 percent of the cars and trucks on the road today. The U.S. Environmental Protection Agency certified the use of E15 fuel. The vast majority of fuel dispensers and underground storage tanks are compatible with E15, and the bill does not require any gas station to carry this product. This American-made fuel blend offers consumers a lower-carbon and lower-cost fuel blend.

SENATOR SCHEIBLE:

Where in Nevada will E15 fuel be sold? Is this fuel the same as 88 octane fuel?

MR. COLEMAN:

It is commonly considered the same as 88 octane fuel. It will be sold to independent retailers who elect to retail it. Every gallon sold in Nevada contains 10 percent ethanol. The bill allows an additional 5 percent ethanol. Ethanol is high octane and cleaner than gasoline. High octane fuels can be purchased at lower costs.

SENATOR SCHEIBLE:

It is my understanding that utilization and functions of fuels differ in various elevations and climates. Nevada has numerous climates with differing characteristics. I see nothing in the bill prohibiting the sale of E15 in any part of the State. I am concerned there may be parts of the State where the fuel will not be safe to dispense. What are the safety and climate considerations in Nevada?

CADENCE MATIJEVICH (Administrator, Division of Consumer Equitability, State Department of Agriculture):

The State Department of Agriculture does not foresee any limitation on sales of E15 fuel based on geographic areas. The State Board of Agriculture adopts fuel specifications established by the American Society for Testing and Materials (ASTM) called ASTM D4814 for gasoline. Various tables in the specifications address climate, elevation and similar issues. Some amendments to the specifications are under consideration in response to changes made by the U.S. Environmental Protection Agency relative to E15. In the regulatory process, the State Board of Agriculture will be able to address this, and the prohibition of selling E15 based on these factors is not foreseen.

SENATOR SCHEIBLE:

What are the environmental impacts of E15 compared to the gasoline used in cars today?

ASSEMBLYWOMAN BROWN-MAY:

The higher percentage of ethanol in gasoline helps reduce greenhouse gas emissions. Forecasting the true impacts to greenhouse gas emissions cannot be made as it is based on consumption and consumer choice. This bill simply allows for another option for consumers.

CHAIR DONATE:

Could this become a consumer protection concern if the consumer is not educated on the differences in fuels which could negatively affect their vehicles?

ASSEMBLYWOMAN BROWN-MAY:

Is your concern relative to consumers purchasing inappropriate gas for their engines?

CHAIR DONATE:

Yes.

ASSEMBLYWOMAN BROWN-MAY:

This could occur if gasoline pumps are not appropriately labeled. This is the reason for the delayed implementation dates on this legislation. The Division of Environmental Protection and the State Board of Agriculture have the opportunity to appropriately identify regulations necessary to ensure consumer awareness. Gasoline pumps need appropriate labeling, but a consumer could still make a mistake.

CHAIR DONATE:

I do not see anything in the bill requiring the prevention of negative effects. Will regulations come after the passage of the bill to address potential consumer concerns?

ASSEMBLYWOMAN BROWN-MAY:

That is correct. The bill requires the State Board of Agriculture to create regulations allowing the sale of motor vehicle fuel containing not more than 15 percent ethanol by volume. It enables a higher octane gasoline be available for purchase in Nevada.

MR. COLEMAN:

Federal government permission must be granted before a retail station in Nevada can sell E15 fuel. The retailer needs an E15 Misfueling Mitigation Plan to prevent consumer problems. Guidance is given, and a large yellow decal is attached to the pump.

SENATOR GOICOECHEA:

I have many small engines on generators labeled "no E15" can be used. There are some impacts with having this fuel available.

MATTHEW WALKER (New Fuels Alliance):

The New Fuels Alliance supports A.B. 411 and looks forward to its involvement in the regulatory process.

JIMMY LAU (Biotechnology Innovation Organization):

Gene Harrington, Director of State Government Affairs, Food & Agriculture of the Biotechnology Innovation Organization has submitted a letter in support for A.B. 411 ([Exhibit B](#)).

MICHAEL WALZ (Director of State Policy, POET):

POET is the largest producer of low-carbon biofuels and renewable alternatives to petroleum. POET supports A.B. 411. Nevadans should have the same opportunity to access a low-carbon renewable fuel option enjoyed by consumers in other states. Consumer savings at the pump are generally 5 to 10 cents per gallon. The E15 fuel is approved for all 2001 and newer vehicle models and all flex fuel-capable vehicles. Ethanol is 46 percent lower in greenhouse gas emissions compared to gasoline. The E15 fuel is offered in more than 30 states, including cold and warm weather climates and altitudes. It has been sold since 2011 with no reports of misfueling or engine issues.

AMY DAVIS (Novozymes):

Novozymes produces enzyme yeast and microbes used in 32 industries resulting in lower uses of chemicals, energy and output. The industries include laundry detergent, orange juice, beer, bread, textile production and biofuels. Biofuel producers use enzymes to increase yields and reduce environmental impacts. Producers convert agricultural feedstock to produce biofuels, especially the extreme low-carbon nonfood agricultural residues known as cellulosic feedstock used in advanced biofuels.

Novozymes supports A.B. 411 allowing consumers to purchase low-carbon renewable liquid fuels and giving retailers competitive options. Biofuels are cleaner-burning and cost-effective renewable fuels.

ELLIOT MALIN (Nevada Petroleum Marketers & Convenience Store Association):
The Nevada Petroleum Marketers & Convenience Store Association is neutral on A.B. 411. The *Nevada Administrative Code* allows for E15 fuels, and the State Board of Agriculture will be working through those regulations. The Association looks forward to being part of the process. Signage should be clear for which vehicles can use E15 fuel. Underground storage tanks are plastic and the higher alcohol content of E15 fuel can eat through the tanks. It is important this policy is implemented correctly and efficiently.

MS. MATIJEVICH:

The State Department of Agriculture is neutral on A.B. 411 and will support the State Board of Agriculture in promulgating regulations necessary to carry out the provisions of the bill. Robust participation from the industry and other governmental agencies is expected. All stakeholders will be included in the development of regulations.

The intent of A.B. 411 is not to prohibit adoption of regulations allowing for the sale of motor vehicle fuels containing more than 15 percent ethanol by volume. Language in the bill on line 5, page 2 states "containing not more than 15 percent ethanol by volume." This clarification of intent is important given that existing regulations adopted by the State Board of Agriculture provide specifications for ethanol fuel blends for flex fuel automatic-start ignition engines, commonly known as E85, and which may contain between 51 percent to 83 percent ethanol by volume.

CHAIR DONATE:

We will close the hearing on A.B. 411, and I will entertain a motion to do pass A.B. 411.

SENATOR SCHEIBLE MOVED TO DO PASS A.B. 411.

SENATOR BROOKS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR DONATE:

We will open the hearing on A.B. 40.

ASSEMBLY BILL 40 (2nd Reprint): Revises provisions relating to petroleum storage tanks. (BDR 40-343)

GREG LOVATO (Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources):

Assembly Bill 40 makes changes governing the Fund for Cleaning Up Discharges of Petroleum, also known as the Petroleum Fund. The bill proposes to change the definition of small business for purposes of Fund administration in response to an Executive Branch audit. The bill makes several other nonfiscal changes to align with statutory language with federal definitions related to underground storage tanks. It allows for approval of additional funding to address investigations and cleanup by releases under certain conditions and with safeguards.

The Petroleum Fund provides coverage of up to \$1 million per tank with lower limits for small heating oil tanks found in gas stations. The Fund reimburses operators for costs associated with investigation and cleanup of petroleum substance releases to soil and groundwater. For most cases, the Fund has a 10 percent copayment requirement, meaning for a \$1 million release, \$900,000 is paid from the Petroleum Fund and \$100,000 from the tank operator.

For operators meeting the definition of small business and defined as a business receiving \$500,000 or less in gross annual receipts from the business at which the tank is located, statute caps the operator's copayment at \$50,000.

The purpose of A.B. 40 is to revise the definition of small business through regulation. This change is proposed in response to an audit finding and recommendation from the Division of Internal Audits, Office of Finance, Office of the Governor in the June 25, 2019, report, "Division of Environmental Protection Petroleum Fund." The bill removes the definition of small business and requires the Board to Review Claims to redefine the definition in regulation. It allows NDEP and the Board to engage in a stakeholder process with a proposed Petroleum Fund policy resolution that could be adopted into the *Nevada Administrative Code* by the Board to Review Claims and the Legislative Commission.

The Board to Review Claims includes members representing the public, the regulated industry and government agencies. The Board continues to successfully update fund policies with a transparent review and robust

engagement from stakeholders. The NDEP will perform additional research and comparisons on options for changing the definition of small business, including thresholds based on gross income, net income, fuel sales and fuel output. It will also explore options for indexing or updating the definition on a periodic basis, which will be facilitated by moving the small business definition from statute to regulation.

Approved amendments reflected in A.B. 40 are from NDEP and the Nevada Petroleum Marketers & Convenience Store Association. The Petroleum Marketers & Convenience Store Association amendment will allow the use of additional funds beyond \$1 million as needed at certain cleanup sites. The NDEP accepted the amendment with the condition that safeguards be included to assure continued necessary effective and efficient use of the funds with appropriate oversight. These changes are reflected in section 6, subsections 3 through 7 of A.B. 40. Sections 1 through 5, 7 and 8 contain minor changes.

The Nevada Petroleum Marketers & Convenience Store Association has submitted a conceptual amendment ([Exhibit C](#)), which is a minor change having certain members of the Board to Review Claims be nominated and is considered a friendly amendment.

SENATOR GOICOECHEA:

Does an operator mean a person who owns or controls the operation of a storage tank?

MR. LOVATO:

Statute refers to storage tank operation in the present tense. The majority of cleanups covered by the Petroleum Fund are performed after a system is no longer in operation or the person who operated the system at the time of release is no longer the operator. The revision clarifies that the funds are available to future owners if the original operator is unable to perform investigation or cleanup.

SENATOR GOICOECHEA:

Section 4 states "every person who for compensation puts petroleum into a storage tank." Does it mean above ground storage programs paying tank insurance but do not pump for compensation cannot access the fund?

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MR. LOVATO:

No, there are no prohibitions on accessing funds for reimbursement related to section 4.

SENATOR SCHEIBLE:

Where does the money in the Petroleum Fund come from?

MR. LOVATO:

In 1989, the Fund was set up to assist small operators to meet financial insurance requirements. Most of the revenue comes from a fee of .75 cent on each gallon of fuel imported to or refined in Nevada. The Department of Motor Vehicles collects the fee from fuel suppliers. A \$100 per year enrollment fee paid for by tank owners who operate federally regulated underground storage tanks is additional revenue for the Fund.

PETER KRUEGER (Nevada Petroleum Marketers & Convenience Store Association):
The Nevada Petroleum Marketers & Convenience Store Association submitted a conceptual amendment, [Exhibit C](#). The change came when it was realized a vacancy on the Board to Review Claims was over two years old, and statute requires a trade association to submit three names. It is difficult to find three business people willing to participate on the Board. The conceptual amendment, [Exhibit C](#), changes NRS 445C.300 by deleting the word "shall" and adding "up to" three persons.

CHAIR DONATE:

We will close the hearing on A.B. 40, and I will entertain a motion to amend and do pass as amended A.B. 40.

SENATOR SCHEIBLE MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 40.

SENATOR BROOKS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR DONATE:

Having no further business, we will adjourn this meeting at 4:14 p.m.

RESPECTFULLY SUBMITTED:

Christine Miner,
Committee Secretary

APPROVED BY:

Senator Fabian Donate, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda
A.B. 411	B	1	Jimmy Lau / Biotechnology Innovation Organization	Letter in Support from Gene Harrington
A.B. 40	C	1	Greg Lovato / Division of Environmental Protection, State Department of Conservation and Natural Resources	Conceptual Amendment, Nevada Petroleum Marketers & Convenience Store Association