

ASSEMBLY BILL NO. 1—COMMITTEE ON NATURAL
RESOURCES, AGRICULTURE, AND MINING

(ON BEHALF OF THE DIVISION OF ENVIRONMENTAL
PROTECTION OF THE STATE DEPARTMENT OF
CONSERVATION AND NATURAL RESOURCES)

PREFILED NOVEMBER 15, 2018

Referred to Committee on Natural Resources,
Agriculture, and Mining

SUMMARY—Revises provisions governing the adoption of certain
regulations by the State Environmental Commission
or a local air pollution control board. (BDR 40-360)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to administrative procedure; revising the
requirements governing the provision of notice regarding
a hearing on a proposed regulation by the State
Environmental Commission or a local air pollution
control board; and providing other matters properly
relating thereto.

Legislative Counsel's Digest:

With certain exceptions, the Nevada Administrative Procedure Act requires each state agency that is not exempt from that Act to provide 30 days' notice of its intended action before holding a hearing on any proposed regulation. (NRS 233B.060) The State Environmental Commission is not exempt from the Act. (NRS 233B.039) Existing law also requires the Commission to publish notice of its hearing on a proposed regulation in newspapers throughout the State, once a week for 3 weeks, commencing at least 30 days before the hearing. (NRS 445B.215) Existing law imposes a similar requirement for such publication on a local air pollution control board that is required to establish and administer a program for the control of air pollution in a county whose population is 100,000 or more (currently Clark and Washoe Counties). **Sections 2 and 6** of this bill eliminate the requirement of publishing such notice in a newspaper. Therefore, the Commission is only required to provide notice of its hearing on a proposed regulation in accordance with the Nevada Administrative Procedure Act and **section 2** requires a



local air pollution control board, which is not subject to that Act, to provide notice of its hearing on a proposed regulation in the same manner. **Sections 1, 3 and 4** of this bill make conforming changes.

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

Section 1. 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]~~ **Adopt** regulations consistent with the general intent and purposes of NRS 445B.100 to 445B.640, inclusive, 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

(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, 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. 2. NRS 445B.500 is hereby amended to read as follows:

445B.500 1. Except as otherwise provided in this section and in NRS 445B.310 and 704.7318:

(a) The district board of health, county board of health or board of county commissioners in each county whose population is



1 100,000 or more shall establish a program for the control of air
2 pollution and administer the program within its jurisdiction unless
3 superseded.

4 (b) The program:

5 (1) Must include, without limitation, standards for the control
6 of emissions, emergency procedures and variance procedures
7 established by ordinance or local regulation which are equivalent to
8 or stricter than those established by statute or state regulation;

9 (2) May, in a county whose population is 700,000 or more,
10 include requirements for the creation, receipt and exchange for
11 consideration of credits to reduce and control air contaminants in
12 accordance with NRS 445B.508; and

13 (3) Must provide for adequate administration, enforcement,
14 financing and staff.

15 (c) The district board of health, county board of health or board
16 of county commissioners is designated as the air pollution control
17 agency of the county for the purposes of NRS 445B.100 to
18 445B.640, inclusive, and the Federal Act insofar as it pertains to
19 local programs, and that agency is authorized to take all action
20 necessary to secure for the county the benefits of the Federal Act.

21 (d) Powers and responsibilities provided for in NRS 445B.210,
22 445B.240 to 445B.470, inclusive, 445B.560, 445B.570, 445B.580
23 and 445B.640 are binding upon and inure to the benefit of local air
24 pollution control authorities within their jurisdiction.

25 2. The local air pollution control board shall ~~carry out all~~
26 ~~provisions of NRS 445B.215 with the exception that notices of~~
27 ~~public hearings must be given in any newspaper, qualified pursuant~~
28 ~~to the provisions of chapter 238 of NRS, once a week for 3 weeks.~~
29 ~~The notice must specify with particularity the reasons for the~~
30 ~~proposed regulations and provide other informative details. NRS~~
31 ~~445B.215 does not apply to the adoption of existing regulations~~
32 ~~upon transfer of authority as provided in NRS 445B.610.]~~ *give*
33 *notice of a public hearing on a regulation which is to be*
34 *considered by the local air pollution control board in the manner*
35 *prescribed in chapter 233B of NRS.*

36 3. In a county whose population is 700,000 or more, the local
37 air pollution control board may delegate to an independent hearing
38 officer or hearing board its authority to determine violations and
39 levy administrative penalties for violations of the provisions of NRS
40 445B.100 to 445B.450, inclusive, and 445B.500 to 445B.640,
41 inclusive, or any regulation adopted pursuant to those sections. If
42 such a delegation is made, 17.5 percent of any penalty collected
43 must be deposited in the county treasury in an account to be
44 administered by the local air pollution control board to a maximum
45 of \$17,500 per year. The money in the account may only be used to



defray the administrative expenses incurred by the local air pollution control board in enforcing the provisions of NRS 445B.100 to 445B.640, inclusive. The remainder of the penalty must be deposited in the county school district fund of the county where the violation occurred and must be accounted for separately in the fund. A school district may spend the money received pursuant to this section only in accordance with an annual spending plan that is approved by the local air pollution control board and shall submit an annual report to that board detailing the expenditures of the school district under the plan. A local air pollution control board shall approve an annual spending plan if the proposed expenditures set forth in the plan are reasonable and limited to:

(a) Programs of education on topics relating to air quality; and

(b) Projects to improve air quality, including, without limitation, the purchase and installation of equipment to retrofit school buses of the school district to use biodiesel, compressed natural gas or a similar fuel formulated to reduce emissions from the amount of emissions produced by the use of traditional fuels such as gasoline and diesel fuel,

↳ which are consistent with the state implementation plan adopted by this State pursuant to 42 U.S.C. §§ 7410 and 7502.

4. Any county whose population is less than 100,000 or any city may meet the requirements of this section for administration and enforcement through cooperative or interlocal agreement with one or more other counties, or through agreement with the State, or may establish its own program for the control of air pollution. If the county establishes such a program, it is subject to the approval of the Commission.

5. No district board of health, county board of health or board of county commissioners may adopt any regulation or establish a compliance schedule, variance order or other enforcement action relating to the control of emissions from plants which generate electricity by using steam produced by the burning of fossil fuel.

6. As used in this section, "plants which generate electricity by using steam produced by the burning of fossil fuel" means plants that burn fossil fuels in a boiler to produce steam for the production of electricity. The term does not include any plant which uses technology for a simple or combined cycle combustion turbine, regardless of whether the plant includes duct burners.

Sec. 3. 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, 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. 4. 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, remain in effect until such time as revised by the State Environmental Commission pursuant to NRS 445B.100 to 445B.640, inclusive.

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 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 remain in full force and effect, and must not be invalidated by reason of such transfer.

Sec. 5. The State Environmental Commission is not required to comply with the requirements of NRS 445B.215 concerning any proposed regulation that the State Environmental Commission submitted to the Legislative Counsel pursuant to NRS 233B.063 before the effective date of this act and that has not been approved by the Legislative Commission by the effective date of this act.



- 1 **Sec. 6.** NRS 445B.215 is hereby repealed.
2 **Sec. 7.** This act becomes effective upon passage and approval.

TEXT OF REPEALED SECTION

445B.215 Notice of public hearing on regulations of Commission. Notice of the public hearing on a regulation which is to be considered by the Commission must be given by at least three publications of a notice in newspapers throughout the State, once a week for 3 weeks, commencing at least 30 days before the hearing.



