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ASSEMBLY BILL NO. 40—COMMITTEE ON NATURAL RESOURCES

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

PREFILED NOVEMBER 18, 2020

Referred to Committee on Natural Resources

SUMMARY—Revises provisions relating to petroleum storage tanks. (BDR 40-343)

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.

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AN ACT relating to storage tanks; revising provisions governing responsibility for discharges from certain storage tanks; revising the requirements relating to the eligibility of a storage tank for the coverage of certain costs from the Fund for Cleaning Up Discharges of Petroleum; authorizing the distribution of additional amounts from the Fund to cover the cost for cleaning up certain discharges; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Under existing law: (1) the Department of Motor Vehicles is required to impose  
2 fees on the importation of certain fuels into this State; and (2) the Division of  
3 Environmental Protection of the State Department of Conservation and Natural  
4 Resources is required to impose an annual fee on certain operators of storage tanks  
5 for the registration of storage tanks used to store petroleum in this State. (NRS  
6 445C.330, 445C.340) The money collected from such fees is required to be  
7 deposited into the Fund for Cleaning Up Discharges of Petroleum, and used, in  
8 part, to: (1) reimburse the Division for the costs of cleaning up discharges involving  
9 petroleum, heating oil and certain petrochemicals from storage tanks and mobile  
10 tanks; and (2) provide financial assistance to operators of petroleum storage tanks  
11 for certain costs related to compliance with federal laws and regulations relating to  
12 preventing discharge of petroleum from a storage tank. (NRS 445C.310, 445C.320,  
13 445C.360-445C.380) The Board to Review Claims is required by existing law to  
14 adopt regulations relating to the Fund. (NRS 445C.310)



15 For the purposes of this existing law, **sections 1 and 2** of this bill expand the  
16 definitions of “operator” and “storage tank.” (NRS 445C.250, 445C.280) **Section 1**  
17 expands the definition of “operator” from a person who owns, controls, or is  
18 responsible for the operation of a storage tank to a person who: (1) owns, controls  
19 or is responsible for the operation and management of a storage tank or a discharge  
20 from a storage tank; (2) was previously in charge of a storage tank immediately  
21 before the use of the storage tank was discontinued; (3) owns the property on which  
22 the storage tank is or was previously located; or (4) owns property on which a  
23 discharge from a storage tank has occurred and is responsible for the management  
24 and cleanup of the discharge. **Section 3** of this bill makes a conforming change by  
25 removing a conflicting definition of “operator.” **Section 2** revises the definition of  
26 “storage tank” to include the distribution piping associated with the tank. **Sections**  
27 **4-8** of this bill make conforming changes by replacing certain references to a “tank”  
28 with “storage tank.”

29 Federal regulations set forth tank tightness testing standards for storage tanks.  
30 (40 C.F.R. § 280.43(c)) Unless a tank has been tested for tightness according to  
31 those federal regulations since July 1, 1988, existing law requires each operator  
32 who is required, or who chooses, to register a tank to test the tank pursuant to those  
33 federal regulations before the tank is eligible for coverage of certain costs from the  
34 Fund. (NRS 445C.360) Federal regulations additionally set forth line tightness  
35 testing standards. (40 C.F.R. § 280.44(b)) **Section 4** of this bill instead requires  
36 that, before a storage tank is eligible for the coverage of certain costs from the  
37 Fund, the operator must, unless the storage tank has been tested for tank and line  
38 tightness according to both federal regulations within the previous 6 months,  
39 demonstrate that: (1) the storage tank is being monitored for a discharge; and (2) a  
40 discharge has not occurred.

41 Existing law allocates the costs of payment relating to the cleanup of discharges  
42 of petroleum from storage tanks and the liability for damages for such discharges  
43 between the Fund and the operator of the storage tank. (NRS 445C.370, 445C.380)  
44 Existing law limits the total amount that may be paid from the Fund in any 1 fiscal  
45 year to certain operators to \$1,900,000 for the cleanup of such discharges and  
46 \$1,900,000 for liability for such damages. (NRS 445C.380) **Section 6** of this bill  
47 increases each of these amounts to \$1,950,000.

48 Existing law provides that any further cost for cleaning up or for damages  
49 which is in excess of the amount paid to an operator from the Fund must be paid by  
50 the operator. (NRS 445C.380) **Section 6** additionally provides that any further cost  
51 for cleaning up which is in excess of the amount paid to an operator must be paid  
52 by the operator unless: (1) the Division requires additional cleanup to occur in  
53 compliance with certain requirements; and (2) the Board determines that certain  
54 conditions are met. **Section 6** provides that if these conditions are met and the  
55 amount paid to the operator from the Fund has been exhausted, the Board may  
56 approve the operator to receive an additional allotment of not more than \$1,000,000  
57 from the Fund for cleaning up discharged petroleum at the site of the storage tank.  
58 **Section 6** authorizes the Board to approve additional allotments of not more than  
59 \$1,000,000 per allotment for cleaning up discharged petroleum at the site of  
60 the storage tank if: (1) the conditions continue to be met; and (2) the previous  
61 allotment has been exhausted. **Section 6** further requires an operator which has  
62 received an additional allotment to pay a certain amount of the costs of cleaning up  
63 discharged petroleum at the site of the storage tank depending on the type of  
64 operator.

65 Existing law prescribes a specific allocation with respect to the operator which  
66 is a small business who is responsible for a discharge. (NRS 445C.380) **Section 6**  
67 removes the definition of “small business” in existing law and instead requires the  
68 Board to Review Claims to define “small business” by regulation. **Sections 4 and 8**



69 of this bill remove references to inapplicable existing law relating to the allocation  
70 of costs for discharges.

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

1     **Section 1.** NRS 445C.250 is hereby amended to read as  
2 follows:

3     445C.250 “Operator” means a person who ~~owns~~:

4     1. *Owns*, controls or is responsible for the operation *and*  
5 *management* of a storage tank ~~or~~ *or a discharge from a storage*  
6 *tank*;

7     2. *Previously owned, controlled or was responsible for the*  
8 *operation and management of a storage tank immediately before*  
9 *the use of the storage tank was discontinued*;

10     3. *Owns the property on which a storage tank is operated and*  
11 *managed, or was previously operated and managed if the use of*  
12 *the storage tank was discontinued*; or

13     4. *Owns property on which a discharge from a storage tank*  
14 *has occurred and is responsible for the management and cleanup*  
15 *of the discharge.*

16     **Sec. 2.** NRS 445C.280 is hereby amended to read as follows:

17     445C.280 “Storage tank” means any tank *, and the distribution*  
18 *pipng associated with the tank*, used to store petroleum, except  
19 petroleum for use in a chemical process.

20     **Sec. 3.** NRS 445C.320 is hereby amended to read as follows:

21     445C.320 Notwithstanding any provision of NRS 445C.150 to  
22 445C.410, inclusive, to the contrary, and except as otherwise  
23 provided in this section:

24     1. The Division may expend not more than \$2,000,000 from  
25 the Fund per fiscal year as reimbursement for necessary costs  
26 incurred by the Division in the response to and cleanup of  
27 discharges in the State, including discharges from a storage tank and  
28 discharges from a mobile tank that occur during the transportation  
29 of petroleum or a petrochemical on roads and highways. The Interim  
30 Finance Committee may approve the expenditure of more than  
31 \$2,000,000 from the Fund in a fiscal year for the purposes described  
32 in this subsection. If a discharge also involves another hazardous  
33 material, the Division may expend money pursuant to this section in  
34 the cleanup of the discharge and the other hazardous material. The  
35 Division shall not expend money from the Fund pursuant to this  
36 section to clean up discharges from pipelines.

37     2. Except as otherwise provided in this subsection, money from  
38 the Fund expended by the Division pursuant to this section must be  
39 used to augment, and must not be used to replace or supplant, any



1 money available from other sources for the cleanup of discharges,  
2 including, without limitation, reimbursements by operators required  
3 to be made to the Division pursuant to NRS 445C.340 and  
4 445C.360. If no money is available from those other sources, the  
5 Division may expend money from the Fund pursuant to this section  
6 to reimburse the Division for any costs specified in subsection 1.

7 3. If the Division expends money pursuant to this section to  
8 clean up a discharge involving:

9 (a) Petroleum, the operator of the tank shall reimburse the  
10 Division for the operator's share of the costs for cleaning up the  
11 discharge.

12 (b) A petrochemical, the person who is responsible for the  
13 discharge shall reimburse the Division for the person's share of the  
14 costs for cleaning up the discharge.

15 ➔ The Division shall, upon being reimbursed pursuant to this  
16 subsection, deposit that money in the Fund.

17 4. As used in this section:

18 (a) "Discharge" means, unless authorized by state or federal law,  
19 any:

20 (1) Release of a petrochemical into water or soil; or

21 (2) Release, leaking or spilling of petroleum or a  
22 petrochemical from a tank into water or soil.

23 ~~(b) "Operator" means a person who owns, controls or is  
24 responsible for the operation of a tank.~~

25 ~~—(c)~~ "Petrochemical" means a chemical derived from petroleum  
26 or a petroleum feedstock, including, without limitation,  
27 perchloroethylene and any degradation product of  
28 perchloroethylene.

29 ~~[(d)] (c)~~ "Tank" means a storage tank or a mobile tank used to  
30 transport petroleum or a petrochemical received for sale or use in  
31 this State.

32 **Sec. 4.** NRS 445C.360 is hereby amended to read as follows:

33 445C.360 1. The operator of every storage tank, and every  
34 person who for compensation puts petroleum into a storage tank,  
35 shall report to the Division every discharge from that *storage* tank of  
36 which the operator or other person is aware or has reason to believe  
37 has occurred. The Division shall undertake or contract for cleaning  
38 up the discharge unless the operator or another person is already  
39 acting properly to clean it up. If the Division cleans up the  
40 discharge, the operator shall reimburse the Division for the  
41 operator's share of the costs. If, in cleaning up the discharge,  
42 the Division expends money from the Fund in accordance with NRS  
43 445C.320, the Division shall, upon being reimbursed by the operator  
44 of the storage tank pursuant to this subsection, deposit that money in  
45 the Fund.



1 2. ~~[Each]~~ *Before a storage tank is eligible for the coverage*  
2 *provided by NRS 445C.380, each* operator who is required  
3 *pursuant to subsection 1 of NRS 445C.340* or who chooses to  
4 register a *storage* tank must, unless the *storage* tank has been tested  
5 for tightness under the federal standards embodied in 40 C.F.R. ~~[§~~  
6 ~~280.43e since July 1, 1988, test the tank pursuant to those standards~~  
7 ~~before it is eligible for the coverage provided by NRS 445C.370 and~~  
8 ~~445C.380.] §§ 280.43(c) and 280.44(b) within the previous 6~~  
9 *months, demonstrate that:*

- 10 (a) *The storage tank is being monitored for a discharge; and*  
11 (b) *A discharge has not occurred.*

12 **Sec. 5.** NRS 445C.370 is hereby amended to read as follows:

13 445C.370 The costs resulting from a discharge from a storage  
14 tank which has a capacity of 1,100 gallons or less and is used to  
15 store heating oil for consumption on the same premises where the  
16 oil is stored must be paid as follows, to the extent applicable:

17 1. The first \$250 for cleaning up and the first \$250 of liability  
18 for damages to a person other than this State or the operator of the  
19 *storage* tank, or both amounts, by the operator.

20 2. If necessary to protect the environment or the public health  
21 and safety, the next \$250,000 for cleaning up and the next \$250,000  
22 for damages to a person other than this State or the operator of the  
23 *storage* tank, or both amounts, from the Fund. These limits apply to  
24 any one discharge and to the total for discharges from storage tanks  
25 controlled by any one operator in any fiscal year. For the purpose of  
26 this limitation, a group of operators more than 50 percent of whose  
27 net worth is beneficially owned by the same person or persons  
28 constitutes one operator.

29 3. Any further cost for cleaning up or for damages, by the  
30 operator.

31 **Sec. 6.** NRS 445C.380 is hereby amended to read as follows:

32 445C.380 *1.* If the costs resulting from a discharge from any  
33 other storage tank exceed \$5,000, the costs must be paid as follows,  
34 to the extent applicable:

35 ~~[1.]~~ (a) By an operator which is an agency, department, division  
36 or political subdivision of the State, 10 percent or \$10,000,  
37 whichever is less, of the first \$1,000,000 for cleaning up each  
38 *storage* tank and of the first \$1,000,000 of liability for damages  
39 from each *storage* tank to any person other than this State or the  
40 operator of the *storage* tank, or both amounts. The balance of the  
41 first \$1,000,000 for cleaning up each *storage* tank or for damages  
42 from each *storage* tank must be paid from the Fund, but the total  
43 amount paid from the Fund pursuant to this ~~[subsection]~~ *paragraph*  
44 in any one fiscal year for discharges from two or more storage tanks



1 under the control of any one operator must not exceed \$1,980,000  
2 for cleaning up *the tanks* and \$1,980,000 for damages.

3 ~~{2-}~~ (b) By an operator which is a small business, ~~{10}~~ 5 percent  
4 of the first \$1,000,000 for cleaning up each *storage* tank and of the  
5 first \$1,000,000 of liability for damages from each *storage* tank to a  
6 person other than this State or the operator of the *storage* tank, or  
7 both amounts. The total amount paid by an operator pursuant to this  
8 ~~{subsection}~~ *paragraph* must not exceed \$50,000 for cleaning up  
9 and \$50,000 for damages regardless of the number of storage tanks  
10 involved. The balance of the first \$1,000,000 for cleaning up each  
11 *storage* tank or for damages from each *storage* tank must be paid  
12 from the Fund, but the total amount paid from the Fund pursuant to  
13 this ~~{subsection}~~ *paragraph* in any one fiscal year for discharges  
14 from two or more storage tanks under the control of any one  
15 operator must not exceed ~~[\$1,900,000]~~ *\$1,950,000* for cleaning up  
16 *the storage tanks* and ~~[\$1,900,000]~~ *\$1,950,000* for damages. For the  
17 purpose of this limitation, a group of operators more than 50 percent  
18 of whose net worth is beneficially owned by the same person or  
19 persons constitutes one operator.

20 ~~{3-}~~ (c) By all other operators:

21 ~~{a)}~~ (1) Ten percent of the first \$1,000,000 for cleaning up  
22 each *storage* tank and of the first \$1,000,000 of liability for damages  
23 from each *storage* tank to a person other than this State or the  
24 operator of the *storage* tank, or both amounts.

25 ~~{b)}~~ (2) Ninety percent of the first \$1,000,000 for cleaning up  
26 each *storage* tank ~~{or}~~ *and of the first \$1,000,000 of liability* for  
27 damages from each *storage* tank must be paid from the Fund.

28 ➔ The total amount paid from the Fund pursuant to ~~{paragraph (b)}~~  
29 *subparagraph (2)* in any one fiscal year for discharges from two or  
30 more storage tanks under the control of any one operator must not  
31 exceed \$1,800,000 for cleaning up *the storage tanks* and  
32 \$1,800,000 for damages. For the purpose of this limitation, a group  
33 of operators more than 50 percent of whose net worth is beneficially  
34 owned by the same person or persons constitutes one operator.

35 ~~{4.—Any}~~ 2. *Any further cost for damages which is in excess*  
36 *of the amount paid pursuant to subsection 1 must be paid by the*  
37 *operator.*

38 3. *Except as otherwise provided in subsections 4 and 5, any*  
39 *further cost for cleaning up ~~{or for damages}~~ which is in excess of*  
40 *the ~~{amounts}~~ amount paid pursuant to ~~{subsections 1, 2 and 3}~~*  
41 *subsection 1 must be paid by the operator.*

42 ~~{5-}~~ 4. *The Board may approve an operator to receive an*  
43 *additional allotment of not more than \$1,000,000 from the Fund*  
44 *for cleaning up discharged petroleum at the site of a storage tank*  
45 *if:*



1 (a) *The Division requires additional cleanup to occur in*  
2 *compliance with any of the requirements of the Division*  
3 *concerning the cleanup of discharged petroleum;*

4 (b) *The Board determines that:*

5 (1) *The operator is in compliance with any requirements of*  
6 *the Division concerning the cleanup of discharged petroleum;*

7 (2) *The operator has obtained approval from the Division*  
8 *for a plan and a schedule to clean up the discharged petroleum;*

9 (3) *Except as otherwise provided in subparagraph (4), the*  
10 *operator is not liable pursuant to subsection 1 of NRS 445C.390;*

11 (4) *If the operator is liable pursuant to subsection 1 of*  
12 *NRS 445C.390, the operator has complied with subsection 2 of*  
13 *NRS 445C.390;*

14 (5) *The facility where the storage tank is located has*  
15 *complied with the applicable provisions of NRS 459.800 to*  
16 *459.856, inclusive, for the immediately preceding 3 years; and*

17 (6) *The operator has not received money for damages*  
18 *pursuant to subsection 1 before July 1, 2021; and*

19 (c) *The amount paid to the operator pursuant to subsection 1*  
20 *for cleaning up the storage tank has been exhausted.*

21 5. *In addition to an allotment made pursuant to subsection 4,*  
22 *the Board may approve an operator to receive one or more*  
23 *additional allotments of not more than \$1,000,000 per allotment*  
24 *from the Fund for cleaning up discharged petroleum at the site of*  
25 *a storage tank if:*

26 (a) *The Division requires additional cleanup pursuant to*  
27 *paragraph (a) of subsection 4;*

28 (b) *The Board determines that the conditions in paragraph (b)*  
29 *of subsection 4 are met; and*

30 (c) *The amounts paid to the operator from the Fund for*  
31 *cleaning up discharged petroleum at the site of the storage tank*  
32 *have been exhausted.*

33 6. *If the Board approves an additional allotment for cleaning*  
34 *up discharged petroleum at the site of a storage tank pursuant to*  
35 *subsection 4 or 5, for each such allotment:*

36 (a) *An operator which is an agency, department, division or*  
37 *political subdivision of the State shall pay an amount equal to 10*  
38 *percent or \$10,000, whichever is less, of the allotment for the costs*  
39 *of cleaning up discharged petroleum at the site of the storage tank.*

40 (b) *An operator which is a small business shall pay an amount*  
41 *equal to 5 percent of the allotment for the costs of cleaning up*  
42 *discharged petroleum at the site of the storage tank.*

43 (c) *Any operator not described in paragraph (a) or (b) shall*  
44 *pay an amount equal to 10 percent of the allotment for the costs of*  
45 *cleaning up discharged petroleum at the site of the storage tank.*



1 7. A political subdivision of the State that receives money from  
2 the Fund pursuant to subsection 1 , 4 or 5 to pay for the costs of  
3 cleaning up shall hold one public hearing upon initiation of the  
4 cleanup and one public hearing every 3 months thereafter until the  
5 cleanup is completed to ensure that the cleanup complies with any  
6 requirements of the Division concerning the cost-effectiveness of  
7 cleaning up. The costs incurred by the political subdivision for the  
8 hearing must not be attributed to the political subdivision as part of  
9 the costs paid by the political subdivision pursuant to subsection 1 ~~f-~~  
10 ~~—6.]~~, 4 or 5.

11 8. For the purposes of this section, ~~[a small business is a~~  
12 ~~business which receives less than \$500,000 in gross annual receipts~~  
13 ~~from the site where the tank is located.]~~ the Board shall define by  
14 regulation “small business.”

15 9. As used in this section, “site” means the facility, whether  
16 situated on a single parcel or on multiple adjacent parcels, where  
17 the storage tank is located.

18 **Sec. 7.** NRS 445C.390 is hereby amended to read as follows:

19 445C.390 1. Any person who, through willful or wanton  
20 misconduct, through gross negligence or through violation of any  
21 applicable statute or regulation, including specifically any state or  
22 federal standard pertaining to the preparation or maintenance of sites  
23 for storage tanks, proximately causes a discharge is liable to the  
24 Division for any cost in cleaning up the discharge or paying for it to  
25 be cleaned up.

26 2. If a discharge occurs, the site of the *storage* tank and any  
27 other premises affected by the discharge must be brought  
28 into compliance with any applicable standard as described in  
29 subsection 1.

30 **Sec. 8.** NRS 445C.410 is hereby amended to read as follows:

31 445C.410 1. Except as otherwise specifically provided in  
32 NRS 445C.320, the provisions of NRS 445C.340 to 445C.400,  
33 inclusive, do not apply to any *storage* tank which:

34 (a) Contains petroleum being transported through this State in  
35 interstate commerce, but do apply to a *storage* tank being used to  
36 store petroleum received for sale or use in this State;

37 (b) Contains fuel for jet or turbine-powered aircraft, or is above  
38 ground and has a capacity of 30,000 gallons or less, unless in either  
39 case the operator complies with subsection 2; or

40 (c) Is above ground and has a capacity of more than 30,000  
41 gallons.

42 2. The operator of a tank exempted by paragraph (b) of  
43 subsection 1 may obtain the coverage provided by NRS ~~[445C.370~~  
44 ~~and]~~ 445C.380 by applying to the Board, paying the fee set pursuant  
45 to NRS 445C.340 for its registration, and, if the tank is used to store



1 fuel for jet or turbine-powered aircraft, reporting monthly the  
2 number of gallons of fuel put into the tank and paying the fee  
3 required by NRS 445C.330. Coverage pursuant to this subsection  
4 begins 6 months after the tank is registered and the required fee first  
5 paid.

6 **Sec. 9.** 1. This section becomes effective upon passage and  
7 approval.

8 2. Sections 1 to 8, inclusive, of this act become effective:

9 (a) Upon passage and approval for the purpose of adopting any  
10 regulations and performing any other preparatory administrative  
11 tasks that are necessary to carry out the provisions of this act; and

12 (b) On July 1, 2021, for all other purposes.







