

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:**

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



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

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

1 **Section 1.** Chapter 445B of NRS is hereby amended by adding  
2 thereto the provisions set forth as sections 2 to 10, inclusive, of this  
3 act.

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

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

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

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

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

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

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



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

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

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

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

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

15 (h) The effect on employment in this State.

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

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

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

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

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

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

27 (b) The Department of Health and Human Services;

28 (c) The Public Utilities Commission of Nevada;

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

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

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

34 (g) Any other person, upon request.

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

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



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

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

6       (b) The Department of Health and Human Services;

7       (c) The Public Utilities Commission of Nevada;

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

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

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

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

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

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

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

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

40       **Sec. 10.** The Department may adopt regulations to carry out  
41 the provisions of sections 2 to 10, inclusive, of this act, and to  
42 implement and enforce a state emissions plan that has been  
43 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.



1 4. Conduct investigations, research and technical studies  
2 consistent with the general purposes of NRS 445B.100 to 445B.640,  
3 inclusive **H**, *and sections 2 to 10, inclusive, of this act.*

4 5. Prohibit as specifically provided in NRS 445B.300 and  
5 445B.320 and as generally provided in NRS 445B.100 to 445B.640,  
6 inclusive, *and sections 2 to 10, inclusive, of this act* the installation,  
7 alteration or establishment of any equipment, device or other article  
8 capable of causing air pollution.

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

12 7. Enter into and inspect at any reasonable time any premises  
13 containing an air contaminant source or a source under construction  
14 for purposes of ascertaining compliance with NRS 445B.100 to  
15 445B.640, inclusive **H**, *and sections 2 to 10, inclusive, of this act.*

16 8. Specify the manner in which incinerators may be  
17 constructed and operated.

18 9. Institute proceedings to prevent continued violation of any  
19 order issued by the Director and to enforce the provisions of NRS  
20 445B.100 to 445B.640, inclusive **H**, *and sections 2 to 10,*  
21 *inclusive, of this act.*

22 10. Require access to records relating to emissions which cause  
23 or contribute to air pollution.

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

27 **Sec. 14.** NRS 445B.235 is hereby amended to read as follows:  
28 445B.235 1. In carrying out the purposes of NRS 445B.100  
29 to 445B.640, inclusive, *and sections 2 to 10, inclusive, of this act,*  
30 the Department may:

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

33 (b) Cooperate with appropriate federal officers and agencies of  
34 the Federal Government, other states, interstate agencies, local  
35 governmental agencies and other interested parties in all matters  
36 relating to air pollution control in preventing or controlling the  
37 pollution of the air in any area.

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



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

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

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

12 3. The Department shall:

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

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

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

20 445B.240 1. Any duly authorized officer, employee or  
21 representative of the Department may enter and inspect any  
22 property, premises or place on or at which an air contaminant source  
23 is located or is being constructed, installed or established at any  
24 reasonable time for the purpose of ascertaining the state of  
25 compliance with NRS 445B.100 to 445B.640, inclusive, *and*  
26 *sections 2 to 10, inclusive, of this act* and rules and regulations in  
27 force pursuant thereto.

28 2. No person shall:

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

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

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

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

37 445B.330 When the Department takes any regulatory action,  
38 under the provisions of NRS 445B.100 to 445B.640, inclusive, *and*  
39 *sections 2 to 10, inclusive, of this act* or under any rule, regulation,  
40 order or standard based thereon, it shall give reasonable notice to all  
41 parties by certified mail, which notice shall state the legal authority,  
42 jurisdiction and reasons for the action taken.

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

44 445B.460 1. If, in the judgment of the Director, any person is  
45 engaged in or is about to engage in any act or practice which



1 constitutes or will constitute a violation of any provision of NRS  
2 445B.100 to 445B.640, inclusive, *and sections 2 to 10, inclusive, of*  
3 *this act* or any rule, regulation, order or operating permit issued  
4 pursuant to NRS 445B.100 to 445B.640, inclusive, *and sections 2 to*  
5 *10, inclusive, of this act*, the Director may request that the Attorney  
6 General apply to the district court for an order enjoining the act or  
7 practice, or for an order directing compliance with any provision of  
8 NRS 445B.100 to 445B.640, inclusive, *and sections 2 to 10,*  
9 *inclusive, of this act* or any rule, regulation, order or operating  
10 permit issued pursuant to NRS 445B.100 to 445B.640, inclusive ~~H~~,  
11 *and sections 2 to 10, inclusive, of this act.*

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

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

22 **Sec. 18.** NRS 445B.470 is hereby amended to read as follows:  
23 445B.470 1. A person shall not knowingly:

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

26 (b) Fail to pay any fee;

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

29 (d) Render inaccurate any monitoring device or method,  
30 ↪ required pursuant to the provisions of NRS 445B.100 to  
31 ~~445B.450, inclusive, or 445B.470 to~~ 445B.640, inclusive, *and*  
32 *sections 2 to 10, inclusive, of this act* or any regulation adopted  
33 pursuant to those provisions.

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

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

40 4. If, in the judgment of the Director of the Department or the  
41 Director's designee, any person is engaged in any act or practice  
42 which constitutes a criminal offense pursuant to NRS 445B.100 to  
43 445B.640, inclusive, *and sections 2 to 10, inclusive, of this act*,  
44 the Director of the Department or the designee may request that the  
45 Attorney General or the district attorney of the county in which the



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

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

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

10 445B.540 1. A county or area whose local jurisdiction over  
11 air pollution control has been superseded may establish or restore a  
12 local air pollution control program if such program is approved as  
13 adequate by the Commission.

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

27 **Sec. 20.** NRS 445B.590 is hereby amended to read as follows:

28 445B.590 1. The Account for the Management of Air Quality  
29 is hereby created in the State General Fund, to be administered by  
30 the Department.

31 2. Money in the Account for the Management of Air Quality  
32 must be expended:

33 (a) To carry out and enforce the provisions of NRS 445B.100 to  
34 445B.640, inclusive, *and sections 2 to 10, inclusive, of this act* and  
35 of any regulations adopted pursuant to those sections, including,  
36 without limitation, the direct and indirect costs of:

37 (1) Preparing regulations and recommendations for  
38 legislation regarding those provisions;

39 (2) Furnishing guidance for compliance with those  
40 provisions;

41 (3) Reviewing and acting upon applications for operating  
42 permits;

43 (4) Administering and enforcing the terms and conditions of  
44 operating permits;

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



- 1 (6) Preparing inventories and tracking emissions;
- 2 (7) Performing modeling, analyses and demonstrations; and
- 3 (8) Establishing and administering a program for the
- 4 provision of assistance, pursuant to 42 U.S.C. § 7661f, to small
- 5 businesses operating stationary sources;

6 (b) In any other manner required as a condition to the receipt of  
7 federal money for the purposes of NRS 445B.100 to 445B.640,  
8 inclusive **H**, *and sections 2 to 10, inclusive, of this act*; and

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

- 10 3. All interest earned on the money in the Account for the
- 11 Management of Air Quality must be credited to the Account. Claims
- 12 against the Account for the Management of Air Quality must be
- 13 paid as other claims against the State are paid.

14 **Sec. 21.** NRS 445C.030 is hereby amended to read as follows:

15 445C.030 “Environmental requirement” means a requirement  
16 contained in NRS 444.440 to 444.645, inclusive, 445A.300 to  
17 445A.730, inclusive, 445B.100 to 445B.640, inclusive, *and sections*  
18 *2 to 10, inclusive, of this act*, NRS 459.400 to 459.600, inclusive,  
19 459.700 to 459.856, inclusive, or 519A.010 to 519A.280, inclusive,  
20 or in a regulation adopted pursuant to any of those sections.

21 **Sec. 22.** NRS 459.460 is hereby amended to read as follows:

22 459.460 1. NRS 459.400 to 459.600, inclusive, do not apply  
23 to any activity or substance which is subject to control pursuant to  
24 NRS 445A.300 to 445A.955, inclusive, and 459.010 to 459.290,  
25 inclusive, except to the extent that they can be applied in a manner  
26 which is not inconsistent with those sections.

27 2. The Director shall administer NRS 459.400 to 459.600,  
28 inclusive, in a manner which avoids duplication of the provisions of  
29 NRS 445A.300 to 445A.955, inclusive, and 445B.100 to 445B.640,  
30 inclusive, *and sections 2 to 10, inclusive, of this act* and the Federal  
31 Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 et seq.

32 **Sec. 23.** This act becomes effective:

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

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





