

Senate Bill No. 536—Committee on Natural Resources

CHAPTER.....

AN ACT relating to the control of air pollution; requiring the creation, by cooperative agreement, of a separate entity to establish and administer a program for the control of air pollution in certain counties; setting forth the powers and duties of such an entity; and providing other matters properly relating thereto.

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

Section 1. NRS 439.410 is hereby amended to read as follows:

439.410 *Except as otherwise provided in NRS 445B.500 and section 4 of this act:*

1. The district board of health has the powers, duties and authority of a county board of health in the health district.

2. The district health department has jurisdiction over all public health matters in the health district, except in matters concerning emergency medical services pursuant to the provisions of chapter 450B of NRS in a county whose population is less than 400,000.

3. In addition to any other powers, duties and authority conferred on a district board of health by this section, the district board of health may, by affirmative vote of a majority of all the members of the board, adopt regulations consistent with law, which must take effect immediately on their approval by the state board of health, to:

(a) Prevent and control nuisances;

(b) Regulate sanitation and sanitary practices in the interests of the public health;

(c) Provide for the sanitary protection of water and food supplies; and

(d) Protect and promote the public health generally in the geographical area subject to the jurisdiction of the health district.

4. Before the adoption, amendment or repeal of a regulation, the district board of health must give at least 30 days' notice of its intended action. The notice must:

(a) Include a statement of either the terms or substance of the proposal or a description of the subjects and issues involved, and of the time when, the place where, and the manner in which interested persons may present their views thereon.

(b) State each address at which the text of the proposal may be inspected and copied.

(c) Be mailed to all persons who have requested in writing that they be placed upon a mailing list, which must be kept by the district board for such purpose.

5. All interested persons must be afforded a reasonable opportunity to submit data, views or arguments, orally or in writing, on the intended action to adopt, amend or repeal the regulation. With respect to substantive regulations, the district board shall set a time and place for an oral public hearing, but if no one appears who will be directly affected by the proposal and requests an oral hearing, the district board may proceed immediately to act upon any written submissions. The district board shall consider fully all written and oral submissions respecting the proposal.

6. Each district board of health shall file a copy of all of its adopted regulations with the county clerk of each county in which it has jurisdiction.

Sec. 2. Chapter 445B of NRS is hereby amended by adding thereto the provisions set forth as sections 3 and 4 of this act.

Sec. 3. *1. In a county whose population is 400,000 or more, the board of county commissioners of the county and the governing body of each city in the county shall, acting jointly, enter into a cooperative agreement pursuant to chapter 277 of NRS to create a separate legal entity for the control of air pollution within the county.*

2. The cooperative agreement described in subsection 1 must set forth, without limitation:

- (a) The organizational structure of the entity;*
- (b) The composition and membership of the board that will govern the entity;*
- (c) The activities in which the entity will engage and the projects and programs that the entity will carry out; and*
- (d) The procedure pursuant to which the entity will adopt ordinances and resolutions.*

Sec. 4. *An entity that is created by a cooperative agreement pursuant to section 3 of this act:*

- 1. Must be governed by a board the membership of which:*
 - (a) Is specified and selected as set forth in the cooperative agreement; and*
 - (b) Consists only of elected officials of the county and the cities that entered into the cooperative agreement.*
- 2. With respect to the control of air pollution within the county:*
 - (a) Shall carry out and exercise the functions, powers and responsibilities that would otherwise be carried out in the county by the district board of health, county board of health or board of county commissioners, as applicable, pursuant to subsection 1 of NRS 445B.500; and*
 - (b) Has all the power and authority of the district board of health, including, without limitation, the authority to administer and enforce:*
 - (1) The provisions of NRS 445B.500 to 445B.540, inclusive; and*
 - (2) The provisions of NRS 439.410 that relate to air quality.*
- 3. Must be designated as:*
 - (a) The air pollution control agency of the county for the purposes of NRS 445B.100 to 445B.640, inclusive, and the Federal Act insofar as it pertains to local programs;*
 - (b) The local air pollution control board; and*
 - (c) The local air pollution control authority.*
- 4. May take all action necessary to secure for the county the benefits of the Federal Act and any other law.*
- 5. May adopt ordinances and resolutions in accordance with the procedure described in paragraph (d) of subsection 2 of section 3 of this act.*
- 6. May issue revenue bonds pursuant to chapter 350 of NRS to defray the cost of the activities, projects and programs described in paragraph (c) of subsection 2 of section 3 of this act.*

7. *May take any other actions that the governing board of the entity determines are necessary to preserve the quality of the air resources of the county.*

Sec. 5. NRS 445B.130 is hereby amended to read as follows:

445B.130 "Director" means the director of the department or his designee or **a** person designated by or pursuant to a county or city ordinance or regional **or cooperative** agreement or regulation to enforce local air pollution control ordinances and regulations.

Sec. 6. NRS 445B.275 is hereby amended to read as follows:

445B.275 1. The governing body of any district, county, ~~city~~ **or other entity** authorized to operate an air pollution control program pursuant to NRS 445B.100 to 445B.640, inclusive, may appoint an air pollution control hearing board.

2. The air pollution control hearing board appointed by a county, city, ~~health district~~ **or other entity** must consist of seven members who are not employees of the state or any political subdivision of the state. One member of the hearing board must be an attorney admitted to practice law in Nevada, one member must be a professional engineer licensed in Nevada and one member must be licensed in Nevada as a general engineering contractor or a general building contractor as defined by NRS 624.215. Three **members** must be appointed for a term of 1 year, three **members** must be appointed for a term of 2 years and one **member** must be appointed for a term of 3 years. Each succeeding term must be for a period of 3 years.

Sec. 7. 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 section 4 of this act:~~

(a) The district board of health, county board of health or board of county commissioners in each county whose population is 100,000 or more shall establish a program for the control of air pollution and administer the program within its jurisdiction unless superseded.

(b) The program must:

(1) Include standards for the control of emissions, emergency procedures and variance procedures established by ordinance or local regulation which are equivalent to or stricter than those established by statute or state regulation; and

(2) Provide for adequate administration, enforcement, financing and staff.

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

(d) Powers and responsibilities provided for in NRS 445B.210, 445B.240 to 445B.450, inclusive, 445B.560, 445B.570, 445B.580 and 445B.640 are binding upon and inure to the benefit of local air pollution control authorities within their jurisdiction.

2. *In a county whose population is 400,000 or more and in which a separate entity for the control of air pollution within the county has been created pursuant to section 3 of this act:*

(a) That entity shall establish and administer the program for the control of air pollution required pursuant to this section and shall carry out and exercise all other functions, powers and responsibilities pertaining to the control of air pollution within the county.

(b) The district board of health, county board of health or board of county commissioners shall not, in their individual capacities, establish and administer the program for the control of air pollution required pursuant to this section or carry out or exercise any functions, powers or responsibilities pertaining to the control of air pollution within the county, except that this paragraph does not impair the authority of the board of county commissioners with regard to land use that might incidentally have an effect on air quality.

3. The local air pollution control board shall carry out all provisions of NRS 445B.215 with the exception that notices of public hearings must be given in any newspaper, qualified pursuant to the provisions of chapter 238 of NRS, once a week for 3 weeks. The notice must specify with particularity the reasons for the proposed regulations and provide other informative details. NRS 445B.215 does not apply to the adoption of existing regulations upon transfer of authority as provided in NRS 445B.610.

~~3-1~~ 4. In a county whose population is 400,000 or more, the local air pollution control board may delegate to an independent hearing officer or hearing board its authority to determine violations and levy administrative penalties for violations of the provisions of NRS 445B.100 to 445B.450, inclusive, and 445B.500 to 445B.640, inclusive, *and sections 3 and 4 of this act*, or any regulation adopted pursuant to those sections. If such a delegation is made, 17.5 percent of any penalty collected must be deposited in the county treasury in an account to be administered by the local air pollution control board to a maximum 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.

~~4-1~~ 5. 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.

~~5-1~~ 6. No district board of health, county board of health, ~~or~~ board of county commissioners *or entity created pursuant to section 3 of this act* 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.

~~16.1~~ 7. For the purposes of 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. 8. NRS 445B.505 is hereby amended to read as follows:

445B.505 Before a district board of health, county board of health or board of county commissioners, pursuant to the authority granted to it by NRS 445B.500, *or an entity created pursuant to section 3 of this act, pursuant to the authority granted to it by section 4 of this act*, enacts an ordinance or adopts a regulation establishing fuel standards for mobile sources of air contaminants, the district board of health, county board of health, ~~or~~ board of county commissioners *or entity created pursuant to section 3 of this act* shall:

1. Determine the cost effectiveness of the proposed ordinance or regulation by comparing it with other methods of controlling pollution.

2. Determine whether the proposed ordinance or regulation is technologically feasible based on evidence presented to the district board of health, county board of health, ~~or~~ board of county commissioners *or entity created pursuant to section 3 of this act* relating to the availability, effectiveness, reliability and safety of any proposed technology when it is used for its proposed use.

3. Conduct public meetings to consult with public and private entities that would be significantly affected by the proposed ordinance or regulation.

Sec. 9. NRS 445B.595 is hereby amended to read as follows:

445B.595 1. Except as otherwise provided by subsection 2, all governmental sources of air contaminants shall comply with all local and state air pollution laws, regulations and ordinances.

2. A fire department, county fire protection district, fire protection training academy or training center may, after obtaining a permit for a specific site, set a fire at that site for training purposes so long as the site is not within an area in which an air pollution episode or emergency constituting, or likely to constitute, an imminent and substantial danger to the health of persons exists. The permit must be obtained from:

(a) The ~~county~~ air pollution control agency ~~of the county~~, if one has been designated pursuant to NRS 445B.500 ~~or section 4 of this act~~; or

(b) The director, if an agency has not been so designated.

3. All planning commissions, zoning boards of adjustment, and governing bodies of unincorporated towns, incorporated cities and counties shall, in the performance of their duties imposed by chapter 278 of NRS or other statutes relating to planning and zoning, consider the effects of possible air pollution and shall submit to the department for evaluation a concise statement of the effects on air quality by complex sources.

Sec. 10. NRS 445B.770 is hereby amended to read as follows:

445B.770 1. In any county whose population is 100,000 or more, the commission shall, in cooperation with the department of motor vehicles and public safety and any local air pollution control ~~agency,~~ *authority*,

adopt regulations for the control of emissions from motor vehicles in areas of the county designated by the commission.

2. In any county whose population is less than 100,000, if the commission determines that it is feasible and practicable to carry out a program of inspecting and testing motor vehicles and systems for the control of emissions from motor vehicles, and if carrying out the program is deemed necessary to achieve or maintain the prescribed standards for the quality of ambient air in areas of the state designated by the commission, the commission shall, in cooperation with the department of motor vehicles and public safety and any local air pollution control agency established ~~under~~ pursuant to NRS 445B.500 which has jurisdiction in a designated area, adopt regulations and transportation controls as may be necessary to carry out the program.

3. The regulations ~~shall~~ must distinguish between light-duty and heavy-duty motor vehicles and may prescribe:

(a) Appropriate criteria and procedures for the approval, installation and use of devices for the control of emissions from motor vehicles; and

(b) Requirements for the proper maintenance of such devices and motor vehicles.

4. The regulations ~~shall~~ must establish:

(a) Requirements by which the department of motor vehicles and public safety shall license authorized stations to inspect, repair, adjust and install devices for the control of emissions for motor vehicles, including criteria by which any person may become qualified to inspect, repair, adjust and install those devices.

(b) Requirements by which the department of motor vehicles and public safety may license an owner or lessee of a fleet of three or more vehicles as a fleet station if the owner or lessee complies with the regulations of the commission. The fleet station shall only certify vehicles which constitute that fleet.

(c) Requirements by which the department provides for inspections of motor vehicles owned by this state and any of its political subdivisions.

5. The commission shall consider, before adopting any regulation or establishing any criteria pursuant to paragraph (a) of subsection 3:

(a) The availability of devices adaptable to specific makes, models and years of motor vehicles.

(b) The effectiveness of those devices for reducing the emission of each type of air pollutant under conditions in this state.

(c) The capability of those devices for reducing any particular type or types of pollutants without significantly increasing the emission of any other type or types of pollutant.

(d) The capacity of any manufacturer to produce and distribute the particular device in such quantities and at such times as will meet the estimated needs in Nevada.

(e) The reasonableness of the retail cost of the device and the cost of its installation and maintenance over the life of the device and the motor vehicle.

(f) The ease of determining whether any such installed device is functioning properly.

Sec. 11. NRS 445C.060 is hereby amended to read as follows:

445C.060 "Regulatory agency" means:

1. The state environmental commission;
2. The state department of conservation and natural resources or the division of environmental protection of that department;
3. A district board of health acting as a solid waste management authority pursuant to NRS 444.440 to 444.620, inclusive; or
4. A district board of health, county board of health, ~~or~~ board of county commissioners ~~administering~~ *or entity created pursuant to section 3 of this act that administers* a program for the control of air pollution pursuant to ~~paragraph (a) of subsection 1 of~~ NRS 445B.500.

Sec. 12. NRS 354.474 is hereby amended to read as follows:

354.474 1. Except as otherwise provided in subsections 2 and 3, the provisions of NRS 354.470 to 354.626, inclusive, apply to all local governments. For the purpose of NRS 354.470 to 354.626, inclusive:

(a) "Local government" means every political subdivision or other entity which has the right to levy or receive money from ad valorem or other taxes or any mandatory assessments, and includes, without limitation, counties, cities, towns, boards, school districts and other districts organized pursuant to chapters 244A, 309, 318, 379, 474, 541, 543 and 555 of NRS, NRS 450.550 to 450.750, inclusive, *an entity created pursuant to section 3 of this act*, and any agency or department of a county or city which prepares a budget separate from that of the parent political subdivision.

(b) "Local government" does not include the Nevada rural housing authority.

2. An irrigation district organized pursuant to chapter 539 of NRS shall fix rates and levy assessments as provided in NRS 539.667 to 539.683, inclusive. The levy of such assessments and the posting and publication of claims and annual financial statements as required by chapter 539 of NRS shall be deemed compliance with the budgeting, filing and publication requirements of NRS 354.470 to 354.626, inclusive, but any such irrigation district which levies an ad valorem tax shall comply with the filing and publication requirements of NRS 354.470 to 354.626, inclusive, in addition to the requirements of chapter 539 of NRS.

3. An electric light and power district created pursuant to chapter 318 of NRS shall be deemed to have fulfilled the requirements of NRS 354.470 to 354.626, inclusive, for a year in which the district does not issue bonds or levy an assessment if the district files with the department of taxation a copy of all documents relating to its budget for that year which the district submitted to the Rural ~~Electrification Administration~~ *Utilities Service* of the United States Department of Agriculture.

Sec. 13. NRS 618.765 is hereby amended to read as follows:

618.765 1. Not later than 60 days after June 28, 1989, the division shall adopt regulations establishing standards and procedures for the licensure of each occupation which are at least as stringent as those contained in the Model Contractor Accreditation Plan for States set out in Appendix C of Subpart E of Part 763 of Title 40 of the Code of Federal Regulations, as it existed on January 1, 1989. The regulations must include standards for:

- (a) Courses which provide initial training;

- (b) Courses which provide a review of the initial training;
- (c) Examinations;
- (d) Qualifications;
- (e) Renewal of licensure; and
- (f) Revocation of licensure.

2. After consultation with the health division of the department of human resources, the division of environmental protection of the state department of conservation and natural resources and the county air pollution control agencies designated pursuant to NRS 445B.500 ~~†~~ *or section 4 of this act*, the division shall adopt standards for:

- (a) Projects for the control of asbestos;
- (b) Specifying the amount of asbestos within a material which must be present to qualify the material as a "material containing asbestos" for the purposes of NRS 618.750 to 618.850, inclusive;
- (c) Laboratories which analyze building materials for the presence of asbestos;
- (d) Laboratories which collect or analyze air samples for those projects; and
- (e) The assessment of the exposure of occupants of a building at the completion of a project for the control of asbestos.

3. The division shall by regulation adopt a standard for the assessment of the exposure of the occupants of a building to airborne asbestos. The standard:

- (a) Must be set according to a time-weighted average concentration of asbestos fibers in the air, measured under normal occupancy conditions; and
- (b) Must be at least as stringent as the corresponding federal standard, if one has been adopted.

4. The standard adopted pursuant to subsection 3 may be used:

- (a) To assess the need to respond to the presence of asbestos in a building; or
- (b) To determine which buildings or structures are most in need of such response.

The standard does not require the monitoring of the air of any building or structure, or create a duty for the division to inspect any building or structure, except in connection with the enforcement of this chapter.

Sec. 14. This act becomes effective upon passage and approval.