

Amendment No. 138

Assembly Amendment to Assembly Bill No. 1	(BDR 40-360)
Proposed by: Assembly Committee on Natural Resources, Agriculture, and Mining	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

KRO/EGO



Date: 4/14/2019

A.B. No. 1—Revises provisions governing the adoption of certain regulations by the State Environmental Commission or a local air pollution control board. (BDR 40-360)



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.

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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 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:

1 With certain exceptions, the Nevada Administrative Procedure Act requires each state
2 agency that is not exempt from that Act to provide 30 days’ notice of its intended action
3 before holding a hearing on any proposed regulation. (NRS 233B.060) The State
4 Environmental Commission is not exempt from the Act. (NRS 233B.039) Existing law also
5 requires the Commission to publish notice of its hearing on a proposed regulation in
6 newspapers throughout the State, once a week for 3 weeks, commencing at least 30 days
7 before the hearing. (NRS 445B.215) Existing law imposes a similar requirement for such
8 publication on a local air pollution control board that is required to establish and administer a
9 program for the control of air pollution in a county whose population is 100,000 or more
10 (currently Clark and Washoe Counties). ~~(NRS 445B.500) Sections 2 and 6~~ of this bill
11 eliminate ~~the~~ **this specific** requirement of publishing such notice in a newspaper. Therefore,
12 the Commission is only required to provide notice of its hearing on a proposed regulation in
13 accordance with the Nevada Administrative Procedure Act, ~~and section~~ **Section 2** requires a
14 local air pollution control board ~~[-which is not subject to that Act.]~~, **in addition to any other**
15 **applicable requirements for notice prescribed in existing law**, to **, at least 30 days before**
16 **the date set for a public hearing on a regulation**, provide notice of ~~the~~ **the hearing by**
17 **posting a copy of the notice on [a proposed regulation in] an Internet website maintained**
18 **by the [same manner.] board. 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:

1 **Section 1.** NRS 445B.210 is hereby amended to read as follows:

2 445B.210 The Commission may:

3 1. ~~Subject to the provisions of NRS 445B.215, adopt~~ *Adopt* regulations
4 consistent with the general intent and purposes of NRS 445B.100 to 445B.640,
5 inclusive, to prevent, abate and control air pollution.

6 2. Establish standards for air quality.

7 3. Require access to records relating to emissions which cause or contribute to
8 air pollution.

9 4. Cooperate with other governmental agencies, including other states and the
10 Federal Government.

11 5. Establish such requirements for the control of emissions as may be
12 necessary to prevent, abate or control air pollution.

13 6. By regulation:

14 (a) Designate as a hazardous air pollutant any substance which, on or after
15 October 1, 1993, is on the federal list of hazardous air pollutants pursuant to 42
16 U.S.C. § 7412(b); and

17 (b) Delete from designation as a hazardous air pollutant any substance which,
18 after October 1, 1993, is deleted from the federal list of hazardous air pollutants
19 pursuant to 42 U.S.C. § 7412(b),

20 ↳ based upon the Commission's determination of the extent to which such a
21 substance presents a risk to the public health.

22 7. Hold hearings to carry out the provisions of NRS 445B.100 to 445B.640,
23 inclusive, except as otherwise provided in those sections.

24 8. Establish fuel standards for both stationary and mobile sources of air
25 contaminants. Fuel standards for mobile sources of air contaminants must be
26 established to achieve air quality standards that protect the health of the residents of
27 the State of Nevada.

28 9. Require elimination of devices or practices which cannot be reasonably
29 allowed without generation of undue amounts of air contaminants.

30 **Sec. 2.** NRS 445B.500 is hereby amended to read as follows:

31 445B.500 1. Except as otherwise provided in this section and in NRS
32 445B.310 and 704.7318:

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

37 (b) The program:

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

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

45 (3) Must provide for adequate administration, enforcement, financing and
46 staff.

47 (c) The district board of health, county board of health or board of county
48 commissioners is designated as the air pollution control agency of the county for
49 the purposes of NRS 445B.100 to 445B.640, inclusive, and the Federal Act insofar

1 as it pertains to local programs, and that agency is authorized to take all action
2 necessary to secure for the county the benefits of the Federal Act.

3 (d) Powers and responsibilities provided for in NRS 445B.210, 445B.240 to
4 445B.470, inclusive, 445B.560, 445B.570, 445B.580 and 445B.640 are binding
5 upon and inure to the benefit of local air pollution control authorities within their
6 jurisdiction.

7 2. ~~{The}~~ In addition to any other applicable requirements for notice
8 prescribed by law, the local air pollution control board shall ~~carry out all~~
9 ~~provisions of NRS 445B.215 with the exception that notices of public hearings~~
10 ~~must be given in any newspaper, qualified pursuant to the provisions of chapter 238~~
11 ~~of NRS, once a week for 3 weeks.],~~ at least 30 days before the date set for a
12 public hearing on a regulation, give notice of the hearing by posting a copy of the
13 notice on an Internet website maintained by the board. The notice must specify
14 with particularity the reasons for the proposed regulations and provide other
15 informative details. [NRS 445B.215 does not apply to the adoption of existing
16 regulations upon transfer of authority as provided in NRS 445B.610. give notice of
17 a public hearing on a regulation which is to be considered by the local air
18 pollution control board in the manner prescribed in chapter 233B of NRS.]

19 3. In a county whose population is 700,000 or more, the local air pollution
20 control board may delegate to an independent hearing officer or hearing board its
21 authority to determine violations and levy administrative penalties for violations of
22 the provisions of NRS 445B.100 to 445B.450, inclusive, and 445B.500 to
23 445B.640, inclusive, or any regulation adopted pursuant to those sections. If such a
24 delegation is made, 17.5 percent of any penalty collected must be deposited in the
25 county treasury in an account to be administered by the local air pollution control
26 board to a maximum of \$17,500 per year. The money in the account may only be
27 used to defray the administrative expenses incurred by the local air pollution
28 control board in enforcing the provisions of NRS 445B.100 to 445B.640, inclusive.
29 The remainder of the penalty must be deposited in the county school district fund of
30 the county where the violation occurred and must be accounted for separately in the
31 fund. A school district may spend the money received pursuant to this section only
32 in accordance with an annual spending plan that is approved by the local air
33 pollution control board and shall submit an annual report to that board detailing the
34 expenditures of the school district under the plan. A local air pollution control
35 board shall approve an annual spending plan if the proposed expenditures set forth
36 in the plan are reasonable and limited to:

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

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

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

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

51 5. No district board of health, county board of health or board of county
52 commissioners may adopt any regulation or establish a compliance schedule,
53 variance order or other enforcement action relating to the control of emissions from

1 plants which generate electricity by using steam produced by the burning of fossil
2 fuel.

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

8 **Sec. 3.** NRS 445B.540 is hereby amended to read as follows:

9 445B.540 1. A county or area whose local jurisdiction over air pollution
10 control has been superseded may establish or restore a local air pollution control
11 program if such program is approved as adequate by the Commission.

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

22 **Sec. 4.** NRS 445B.610 is hereby amended to read as follows:

23 445B.610 1. All rules, regulations and standards promulgated by the State
24 Commission of Environmental Protection pertaining to air pollution control in force
25 on July 1, 1973, remain in effect until such time as revised by the State
26 Environmental Commission pursuant to NRS 445B.100 to 445B.640, inclusive.

27 2. Any and all action taken by the State Commission of Environmental
28 Protection, including but not limited to existing orders, notices of violation,
29 variances, permits, cease and desist orders and compliance schedules, shall remain
30 in full force and effect and binding upon the State Environmental Commission, the
31 Director, the Department and all persons to whom such action may apply on or
32 after July 1, 1973.

33 3. In the event that a local air pollution control program described in NRS
34 445B.500 is transferred in whole or in part from an existing air pollution control
35 agency to another agency, all rules and regulations adopted by the existing agency
36 may be readopted as amended to reflect the transfer of authorities by the new
37 agency immediately upon such transfer. ~~[, and the provisions of NRS 445B.215 do
38 not apply to such readoption.]~~

39 4. If a transfer of local authority as described in subsection 3 occurs, all
40 orders, notices of violation, variances, cease and desist orders, compliance
41 schedules and other legal action taken by the existing air pollution control board,
42 control officer or hearing board remain in full force and effect, and must not be
43 invalidated by reason of such transfer.

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

49 **Sec. 6.** NRS 445B.215 is hereby repealed.

50 **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.