

ASSEMBLY BILL NO. 294—ASSEMBLYWOMAN
BUSTAMANTE ADAMS

MARCH 15, 2013

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to economic development. (BDR 27-777)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
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 economic development; requiring the submission of certain reports concerning local emerging small businesses to the Office of Economic Development; increasing the threshold for requiring formal contracts for certain purchases by the State; providing for the certification of local emerging small businesses by the Office; requiring the Office to establish goals for the participation of local emerging small businesses in certain contracts relating to purchasing and public works projects; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law creates the Office of Economic Development within the Office of the Governor to coordinate and oversee economic development programs in this State. (NRS 231.043, 231.055) **Sections 11-14** of this bill: (1) provide for the certification of eligible local emerging small businesses by the Office; (2) require the Office to post a list of the certified local emerging small businesses on its Internet website; and (3) require the Office to adopt regulations, including regulations relating to the application form and procedure for that certification. Further, **sections 15 and 16** of this bill require the Office to establish: (1) an outreach program for local emerging small businesses to connect those businesses with state agencies seeking state purchasing contracts and contracts for public works of this State; and (2) goals concerning the participation of local emerging small businesses in those contracts.

Sections 1, 2 and 5 of this bill require local governments in counties whose population is 100,000 or more (currently Clark and Washoe Counties), the Purchasing Division and the State Public Works Division, both of the Department of Administration, to submit reports twice each year to the Office concerning the



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participation of local emerging small businesses in certain contracts. **Section 17** of this bill requires the Office to submit a report once each year to the Governor and the Legislature or the Interim Finance Committee concerning: (1) whether the goals for participation of the local emerging small businesses in certain contracts are being met and, if not, what efforts the Purchasing Division and State Public Works Division are undertaking to meet the goals; and (2) certain other information relating to the local emerging small businesses that have been certified by the Office.

Finally, **section 4** of this bill raises the threshold for requiring formal contracts for certain purchases by the State from \$25,000 to \$50,000 and authorizes the Administrator of the Purchasing Division to solicit the purchase of materials, supplies and equipment having estimated costs of \$50,000 or less under certain circumstances.

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

Section 1. Chapter 332 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The governing body or its authorized representative in a county whose population is 100,000 or more shall submit a report every 6 months to the Office. The report must include, without limitation, for the period since the last report:

(a) The number of local emerging small businesses that the governing body or its authorized representative solicited to submit a bid or proposal to the governing body or its authorized representative for a local purchasing contract;

(b) The number of local emerging small businesses that submitted a bid or proposal to the governing body or its authorized representative for a local purchasing contract;

(c) The number of local purchasing contracts that were awarded by the governing body or its authorized representative to local emerging small businesses;

(d) The total number of dollars' worth of local purchasing contracts that were awarded by the governing body or its authorized representative to local emerging small businesses; and

(e) Any other information deemed relevant by the Office.

2. The report required pursuant to subsection 1 must be submitted within 90 days after:

(a) The end of each fiscal year; and

(b) The end of each calendar year.

3. As used in this section:

(a) "Local emerging small business" has the meaning ascribed to it in section 8 of this act.

(b) "Local purchasing contract" means a contract awarded pursuant to the provisions of this chapter for which the estimated



1 *cost is \$50,000 or less. The term does not include a contract for*
2 *which a procurement card is used.*

3 *(c) "Office" means the Office of Economic Development.*

4 *(d) "Procurement card" means a charge card issued to a*
5 *governing body or its authorized representative for the purpose of*
6 *purchasing goods and services pursuant to the provisions of this*
7 *chapter.*

8 **Sec. 2.** Chapter 333 of NRS is hereby amended by adding
9 thereto a new section to read as follows:

10 *1. The Purchasing Division shall submit a report every 6*
11 *months to the Office. The report must include, without limitation,*
12 *for the period since the last report:*

13 *(a) The number of local emerging small businesses that the*
14 *Purchasing Division solicited to submit a bid or proposal to the*
15 *Purchasing Division on a state purchasing contract;*

16 *(b) The number of local emerging small businesses that*
17 *submitted a bid or proposal on a state purchasing contract;*

18 *(c) The number of state purchasing contracts that were*
19 *awarded by the Purchasing Division to local emerging small*
20 *businesses;*

21 *(d) The total number of dollars' worth of state purchasing*
22 *contracts that were awarded by the Purchasing Division to local*
23 *emerging small businesses;*

24 *(e) Whether each goal established by the Office pursuant to*
25 *section 16 of this act has been achieved;*

26 *(f) For each goal established by the Office pursuant to section*
27 *16 of this act that has not been achieved, information on all efforts*
28 *undertaken by the Purchasing Division to achieve the goals in the*
29 *current fiscal year and a proposed plan for achieving the goals in*
30 *the subsequent fiscal year; and*

31 *(g) Any other information deemed relevant by the Office.*

32 *2. The report required pursuant to subsection 1 must be*
33 *submitted within 30 days after:*

34 *(a) The end of each fiscal year; and*

35 *(b) The end of each calendar year.*

36 *3. As used in this section:*

37 *(a) "Local emerging small business" has the meaning ascribed*
38 *to it in section 8 of this act.*

39 *(b) "Office" means the Office of Economic Development.*

40 *(c) "State purchasing contract" means a contract awarded*
41 *pursuant to the provisions of subsection 3 of NRS 333.300.*

42 **Sec. 3.** (Deleted by amendment.)

43 **Sec. 3.5.** NRS 333.280 is hereby amended to read as follows:

44 **333.280** 1. Except as otherwise provided in this subsection,
45 the Administrator may enter into a contract using a standard form of



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1 contract, by *solicitation in accordance with the provisions of NRS*
2 *333.300 or by* advertising in accordance with the provisions of NRS
3 333.310, for the furnishing of supplies, materials and equipment for
4 not more than 2 years. If an extended contractual period is necessary
5 to promote the use of a manufacturing process which emphasizes
6 the efficient use of energy or to promote the manufacture of
7 products which use recycled materials, the Administrator may enter
8 into such a contract for not more than 3 years.

9 2. The original terms of a contract may be extended annually
10 thereafter if the conditions for extension are specified in the original
11 solicitation, and the Administrator determines that an extension is in
12 the best interest of the State.

13 **Sec. 4.** NRS 333.300 is hereby amended to read as follows:

14 333.300 1. Except as otherwise provided in NRS 333.375,
15 the Administrator shall give reasonable notice, by advertising and
16 by written notice provided to persons in a position to furnish the
17 classes of commodities involved, as shown by its records, of all
18 proposed purchases of supplies, materials and equipment to be
19 purchased in accordance with a schedule prepared in conformity
20 with the provisions of NRS 333.250.

21 2. All such materials, supplies and equipment, except as
22 otherwise provided in this section, if the estimated cost thereof
23 exceeds ~~[\$25,000,]~~ *\$50,000*, must be purchased by formal contract
24 from the lowest responsible bidder after notice inviting the
25 submission of sealed proposals to the Administrator of the
26 Purchasing Division at the date, hour and location set forth in
27 the proposal, and at that date, hour and location the proposals must
28 be publicly opened. The Purchasing Division may reject any or all
29 proposals, or may accept the proposal determined best for the
30 interest of the State. The notice must be published as prescribed in
31 NRS 333.310.

32 3. *The Administrator may solicit the purchase of materials,*
33 *supplies and equipment, if the estimated cost thereof is \$50,000 or*
34 *less, by written contract from the lowest responsible bidder if*
35 *notice of the proposed purchase is provided to:*

36 (a) *At least three persons in a position to furnish the materials,*
37 *supplies or equipment; and*

38 (b) *The Office of Economic Development.*

39 4. In case of emergencies caused by acts of God or the national
40 defense or other unforeseeable circumstances, the provisions for
41 advertisements on competitive bids may be waived by the
42 Administrator, but every effort must be made to secure the
43 maximum competitive bidding under the circumstances. In no case
44 may contracts be awarded until every possible effort has been made
45 to secure at least three bona fide competitive bids.



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~~14.1~~ 5. In awarding contracts for the purchase of supplies, materials and equipment, if two or more lowest bids are identical, the Administrator shall:

(a) If the lowest bids are by bidders resident in the State of Nevada, accept the proposal which, in the discretion of the Administrator, is in the best interests of this State.

(b) If the lowest bids are by bidders resident outside the State of Nevada:

(1) Accept the proposal of the bidder who will furnish goods or commodities produced or manufactured in this State; or

(2) Accept the proposal of the bidder who will furnish goods or commodities supplied by a dealer resident in the State of Nevada.

Sec. 5. Chapter 338 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The Division shall submit a report every 6 months to the Office. The report must include, without limitation, for the period since the last report:

(a) The number of local emerging small businesses that the Division solicited to submit a bid or proposal on a contract for a public work in this State;

(b) The number of local emerging small businesses that submitted a bid or proposal on a contract for a public work in this State;

(c) The number of contracts for public works of this State that were awarded by the Division to local emerging small businesses;

(d) The total number of dollars' worth of contracts for public works of this State that were awarded by the Division to local emerging small businesses;

(e) Whether each goal established by the Office pursuant to section 16 of this act has been achieved;

(f) For each goal established by the Office pursuant to section 16 of this act that has not been achieved, information on all efforts undertaken by the Division to achieve the goals in the current fiscal year and a proposed plan for achieving the goals in the subsequent fiscal year; and

(g) Any other information deemed relevant by the Office.

2. The reports required pursuant to subsection 1 must be submitted within 30 days after:

(a) The end of each fiscal year; and

(b) The end of each calendar year.

3. As used in this section:

(a) "Local emerging small business" has the meaning ascribed to it in section 8 of this act.

(b) "Office" means the Office of Economic Development.



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1 **Sec. 6.** Chapter 231 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 7 to 17, inclusive, of this
3 act.

4 **Sec. 7.** *As used in sections 7 to 17, inclusive, of this act,*
5 *unless the context otherwise requires, the words and terms defined*
6 *in sections 8, 9 and 10 of this act have the meanings ascribed to*
7 *them in those sections.*

8 **Sec. 8.** *"Local emerging small business" means a business*
9 *that has been certified by the Office pursuant to section 12 of this*
10 *act.*

11 **Sec. 9.** *"Local purchasing contract" has the meaning*
12 *ascribed to it in section 1 of this act.*

13 **Sec. 10.** *"State purchasing contract" has the meaning*
14 *ascribed to it in section 2 of this act.*

15 **Sec. 11. 1.** *To be eligible for certification as a local*
16 *emerging small business, a business must:*

17 (a) *Be in existence, operational and operated for a profit;*

18 (b) *Maintain its principal place of business in this State;*

19 (c) *Be in compliance with all applicable licensing and*
20 *registration requirements in this State;*

21 (d) *Not be a subsidiary or parent company belonging to a*
22 *group of firms that are owned or controlled by the same persons if,*
23 *in the aggregate, the group of firms does not qualify pursuant to*
24 *subsection 2 or 3 for designation as a tier 1 firm or a tier 2 firm;*
25 *and*

26 (e) *Qualify pursuant to subsection 2 or 3 for designation as a*
27 *tier 1 firm or a tier 2 firm.*

28 **2.** *To be designated a tier 1 firm, a business must not employ*
29 *more than 20 full-time or full-time equivalent employees and:*

30 (a) *If the business is involved in providing construction*
31 *services, the average annual gross receipts for the business must*
32 *not exceed \$1.7 million for the 3 years immediately preceding the*
33 *date of application for certification as a local emerging small*
34 *business; or*

35 (b) *If the business is involved in the sale of goods or in*
36 *providing services other than construction services, the average*
37 *annual gross receipts for the business must not exceed \$700,000*
38 *for the 3 years immediately preceding the date of application for*
39 *certification as a local emerging small business.*

40 **3.** *To be designated a tier 2 firm, a business must not employ*
41 *more than 30 full-time or full-time equivalent employees and:*

42 (a) *If the business is involved in providing construction*
43 *services, the average annual gross receipts for the business must*
44 *not exceed \$3.5 million for the 3 years immediately preceding the*



1 *date of application for certification as a local emerging small*
2 *business; or*

3 *(b) If the business is involved in the sale of goods or in*
4 *providing services other than construction services, the average*
5 *annual gross receipts for the business must not exceed \$1.3*
6 *million for the 3 years immediately preceding the date of*
7 *application for certification as a local emerging small business.*

8 *4. In determining if a business qualifies for a designation as*
9 *a tier 1 firm or a tier 2 firm pursuant to subsection 2 or 3, the*
10 *Office shall use the criteria set forth in section 13 of this act to*
11 *determine whether an employee is a full-time equivalent employee*
12 *for the purposes of such a designation.*

13 **Sec. 12.** *1. A business may apply, on a form prescribed by*
14 *regulation of the Office, to the Office for certification as a local*
15 *emerging small business. The application must be accompanied by*
16 *such proof as the Office requires to demonstrate that the applicant*
17 *is in compliance with the criteria set forth in section 11 of this act*
18 *and any regulations adopted pursuant to section 14 of this act.*

19 *2. Upon receipt of the application and when satisfied that the*
20 *applicant meets the requirements set forth in this section, section*
21 *11 of this act and any regulations adopted pursuant to section 14*
22 *of this act, the Office shall certify the business as a local emerging*
23 *small business.*

24 *3. The Office shall compile a list of the local emerging small*
25 *businesses certified pursuant to this section and post the list on its*
26 *Internet website.*

27 **Sec. 13.** *To determine whether an employee is a full-time*
28 *equivalent employee pursuant to section 11 of this act:*

29 *1. An owner of a business applying for certification as a local*
30 *emerging small business must not be considered a full-time*
31 *equivalent employee;*

32 *2. The period during which the full-time equivalency of an*
33 *employee is determined must be based on the same period as the*
34 *tax year for the business applying for certification as a local*
35 *emerging small business; and*

36 *3. The hours worked by part-time and seasonal employees*
37 *must be converted into full-time equivalent hours by dividing by*
38 *2,080 the total hours worked for the business applying for*
39 *certification by all part-time and seasonal employees.*

40 **Sec. 14.** *1. The Office shall adopt regulations prescribing:*

41 *(a) The application form and procedure for certification as a*
42 *local emerging small business; and*

43 *(b) The forms for the reports required pursuant to sections 1, 2*
44 *and 5 of this act.*



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1 2. The Office may adopt regulations to carry out the
2 provisions of sections 7 to 17, inclusive, of this act.

3 **Sec. 15.** 1. The Office shall, in consultation with the
4 Department of Business and Industry, establish an outreach
5 program for local emerging small businesses to connect those
6 businesses with state agencies seeking state purchasing contracts
7 and contracts for public works of this State. To the extent
8 practicable, such an outreach program must include private
9 contractors to increase the awareness of those private contractors
10 of the option of using local emerging small businesses to fulfill the
11 contract needs of the private contractors.

12 2. The Office shall encourage the Purchasing Division of the
13 Department of Administration and the State Public Works
14 Division of the Department of Administration to:

15 (a) Use the list of the local emerging small businesses
16 compiled by the Office pursuant to section 12 of this act; and

17 (b) Develop outreach programs for local emerging small
18 businesses.

19 **Sec. 16.** 1. The Office shall establish goals for:

20 (a) The submission of bids or proposals by local emerging
21 small businesses for state purchasing contracts and for the
22 awarding of those contracts to local emerging small businesses;
23 and

24 (b) The submission of bids or proposals by local emerging
25 small businesses for contracts for public works of this State for
26 which the estimated cost is less than \$100,000 and for the
27 awarding of those contracts to local emerging small businesses.

28 2. The Office shall encourage:

29 (a) Local governments to award local purchasing contracts
30 and contracts for public works of the local government to local
31 emerging small businesses;

32 (b) Local governments to establish goals for the awarding of
33 local purchasing contracts and contracts for public works of the
34 local government to local emerging small businesses; and

35 (c) Each local government in a county whose population is less
36 than 100,000 to submit reports to the Office that are similar in
37 nature and frequency to the reports required pursuant to section 1
38 of this act.

39 3. The Office, in cooperation with the Office of the Governor,
40 shall establish an annual recognition program for the state
41 agencies that meet the goals established pursuant to subsection 1.

42 **Sec. 17.** On or before September 15 of each year, the Office
43 shall submit a report to the Governor and to the Director of the
44 Legislative Counsel Bureau for transmittal to the Interim Finance
45 Committee, if the report is received during an odd-numbered year,



1 *or to the next session of the Legislature, if the report is received*
2 *during an even-numbered year. The report must include, without*
3 *limitation, for the fiscal year immediately preceding the*
4 *submission of the report:*

5 *1. A summary of the information submitted to the Office*
6 *pursuant to sections 1, 2 and 5 and, if applicable, paragraph (c) of*
7 *subsection 2 of section 16 of this act, including, without limitation,*
8 *efforts undertaken to achieve any goals established by the Office*
9 *which were not achieved in the current fiscal year and proposed*
10 *action plans for achieving those goals in the subsequent fiscal*
11 *year; and*

12 *2. The number of local emerging small businesses which are*
13 *designated as tier 1 firms and tier 2 firms pursuant to section 11 of*
14 *this act. The numbers must be reported separately for businesses*
15 *involved in providing construction services and for businesses*
16 *involved in the sale of goods or in providing services other than*
17 *construction services.*

18 **Sec. 18.** (Deleted by amendment.)

19 **Sec. 19.** 1. The initial reports required pursuant sections 1, 2
20 and 5 of this act must include information for the period which
21 begins on January 1, 2014, and ends on June 30, 2014.

22 2. Notwithstanding the provisions of section 17 of this act, the
23 initial report required pursuant to that section must include
24 information for the period which begins on January 1, 2014, and
25 ends on June 30, 2014.

26 **Sec. 20.** This act becomes effective:

27 1. Upon passage and approval for the purposes of adopting
28 regulations and performing any other preparatory administrative
29 tasks that are necessary to carry out the provisions of this act; and

30 2. On January 1, 2014, for all other purposes.

