

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TRANSPORTATION**

**Seventy-Seventh Session
March 12, 2013**

The Committee on Transportation was called to order by Chairman Richard Carrillo at 3:26 p.m. on Tuesday, March 12, 2013, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Richard Carrillo, Chairman
Assemblyman Joseph M. Hogan, Vice Chairman
Assemblyman Paul Anderson
Assemblyman David P. Bobzien
Assemblywoman Maggie Carlton
Assemblywoman Lucy Flores
Assemblyman John Hambrick
Assemblyman Cresent Hardy
Assemblyman James W. Healey
Assemblywoman Ellen B. Spiegel
Assemblyman Michael Sprinkle
Assemblywoman Heidi Swank
Assemblyman Jim Wheeler
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

Assemblyman Steven Brooks (excused)



GUEST LEGISLATORS PRESENT:

Assemblywoman Irene Bustamante Adams, Clark County Assembly
District No. 42

STAFF MEMBERS PRESENT:

Vance Hughey, Committee Policy Analyst
Sean McCoy, Committee Policy Analyst
Cinthia Zermeno, Committee Manager
Jacque Lethbridge, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Rudy Malfabon, P.E., Director, Department of Transportation
Yvonne Schuman, Civil Rights Officer, Department of Transportation
Otto Mérida, representing the Latin Chamber of Commerce Nevada, Inc.
Peter Guzman, representing the Valley Center Opportunity Zone
Brin Gibson, representing the Latin Chamber of Commerce Nevada, Inc.
Kenneth Evans, Private Citizen, Las Vegas, Nevada
John Madole, representing the Association of General Contractors,
Nevada Chapter
Dan Musgrove, representing Barrett-Jackson Collector Car Auctions
George Ross, representing Copart, Inc.
Deborah Shope, Services Manager III, Emission Control Program, Division
of Compliance Enforcement, Department of Motor Vehicles
Troy L. Dillard, Interim Director, Department of Motor Vehicles
Jeanette Belz, representing the Association of General Contractors,
Nevada Chapter

Chairman Carrillo:

[Committee protocol and rules were explained. Chairman Carrillo read Rule No. 54, Testimony, Witnesses and Exhibits, from the "Excerpts of the Assembly Standing Rules, 77th Session (2013)."] I will entertain a motion for introduction of BDR 43-76.

BDR 43-76—Revises provisions governing designs of special license plates.
(Later introduced as [Assembly Bill 243](#).)

ASSEMBLYMAN SPRINKLE MOVED TO INTRODUCE BDR 43-76.

ASSEMBLYMAN PAUL ANDERSON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN BROOKS WAS ABSENT FOR THE VOTE.)

Chairman Carrillo:

I will entertain a motion for introduction of BDR 43-77.

BDR 43-77—Revises provisions governing special license plates.
(Later introduced as [Assembly Bill 244](#).)

ASSEMBLYWOMAN FLORES MOVED TO INTRODUCE BDR 43-77.

ASSEMBLYMAN WHEELER SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN BROOKS WAS ABSENT FOR THE VOTE.)

Chairman Carrillo:

I will entertain a motion for introduction of BDR 43-145.

BDR-43-145—Authorizes the placement of a designation of veteran status on certain documents. (Later introduced as [Assembly Bill 242](#).)

ASSEMBLYMAN HEALEY MOVED TO INTRODUCE BDR 43-145.

ASSEMBLYMAN BOBZIEN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN BROOKS WAS ABSENT FOR THE VOTE.)

Chairman Carrillo:

The Committee will go into work session. Vance Hughey, Committee Policy Analyst, will walk us through the work session documents.

**Assembly Bill 14: Makes various changes relating to motor vehicles.
(BDR 43-369)**

Vance Hughey, Committee Policy Analyst:

Assembly Bill 14 revises provisions concerning temporary permits to act as a salesperson ([Exhibit C](#)). It also includes a provision to remove a suspension of the registration of any motor vehicle for which the Department of Motor Vehicles (DMV) cannot verify coverage of liability insurance without requiring the owner of the vehicle to pay a fee or administrative fine if the registered owner of the vehicle proves to the satisfaction of DMV that the vehicle was dormant during the period in which the DMV was unable to verify liability insurance coverage.

Assemblymen Carlton and Wheeler proposed an amendment to this bill to provide that a license or temporary permit to engage in the activity of a salesperson of vehicles, trailers or semitrailers, or to act in the capacity of a salesperson, shall not be automatically suspended just because the person changes his place of employment or is temporarily not employed as a salesperson. Additionally, once issued, license would belong to the licensee and remain valid unless the person fails to renew the license or the license is subsequently suspended or revoked for cause. Further, the bill would be amended to provide that the dealer is responsible for notifying DMV within ten days of either commencing or ceasing an employment relationship with a person who is hired as a salesperson. In the case of cessation of an employment relationship, the dealer must return the license to the licensed salesperson within 24 hours.

Assemblyman Paul Anderson:

Should the 24-hour period be business days? Would the offices that hold those licenses be open on Sunday? If the salesperson quits, is fired, or let go on Saturday, would the office staff be available in that 24-hour time?

Assemblyman Wheeler:

Every dealer I have ever worked for has been open on Sunday.

Assemblyman Paul Anderson:

In my office, employees were available on Saturday or Sunday, and you would have someone who could return the license. Maybe the owner keeps the licenses in his office or has multiple dealerships with a central office. Maybe it would be more appropriate to extend the period.

Assemblyman Wheeler:

Licenses must be posted prominently for the public to see at your place of employment. It is not hard to get the license down.

Assemblywoman Carlton:

In the discussion we had, the amendment revolves around the fact the license should belong to the salesperson and not the employer. The idea was to make sure the dealer did not hold the license from the salesperson so that person was unable to go to their next place of employment, because they cannot take the next job until they have the license. The license belongs to the employee, not the employer. If you are no longer employed at the end of the day, the owner should open the case, take the license out, and hand it back to you. That was the motivation behind the 24-hour period. If a dealership were closed on Sunday, why would they not hand the license to the employee right away? Why would they delay? My goal was to make sure that salesperson could go to a new job on Monday or Tuesday and not be prohibited from working.

Assemblyman Paul Anderson:

I would agree with the overall goal. I just wanted to know the practicality of it. I want to make sure we are not putting in a guideline that somebody could not adhere to and have ramifications. If I quit, versus being fired, there is an extended time before I get my final paycheck whether or not that period coincides with getting my last paycheck or if I am leaving for other reasons.

Assemblyman Wheeler:

Would Assemblywoman Carlton be averse to making that say "by end of business the next business day?"

Assemblywoman Carlton:

If it says next business day, that would address the issue of ownership and possession of the license.

Chairman Carrillo:

Is there any other discussion regarding A.B. 14? Thank you Assemblyman Anderson for bringing this to our attention. At the end of the day, we want to make sure we have good policy.

ASSEMBLYMAN HAMBRICK MADE A MOTION TO AMEND AND DO PASS ASSEMBLY BILL 14.

ASSEMBLYMAN WHEELER SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN BROOKS WAS ABSENT FOR THE VOTE.)

Chairman Carrillo:

Assemblyman Wheeler will do the floor assignment on A.B. 14.

Assembly Bill 24: Makes various changes to provisions relating to license plates. (BDR 43-367)

Vance Hughey, Committee Policy Analyst:

Assembly Bill 24 would provide for a commemorative 150th anniversary license plate (Exhibit D.) The bill also revises provisions governing the design of license plates. It deletes a requirement that the plates be in colors that are predominately blue and silver, and contain letters and numbers that are of the same size. It provides that the Director of the Department of Motor Vehicles (DMV) will determine the number of characters to be contained on each license plate.

The DMV proposed an amendment that affected four provisions. A copy is attached to your work session document. The first one changes where the \$7.50 fee collected would be deposited. Instead of going into the Motor Vehicle Fund, it would be deposited into the Revolving Account for the Issuance of Special License Plates. The second change would be an increase in the renewal fee from \$10 to \$20. The third includes a new provision that would require an annual report to the Director of the Legislative Counsel Bureau concerning the revenues and expenditures associated with the license plate. Finally, a new provision would require that the DMV not issue the commemorative license plate after 2018. Assemblywoman Carlton proposed a second amendment that would impose the date as October 31, 2015. Staff's understanding is that after this document was put together there was a notice that the two parties have agreed the date should be October 31, 2016.

Assemblywoman Carlton:

I did have a discussion with a member of the Governor's staff yesterday. They had a few concerns about the 2015 date. They feel the final date should be 2016. They will have accomplished their mission by then. After seeing the plate, I think it is going to be very popular and desirable. It is definitely going to be competition to the other plates hanging on DMV walls. With the ending date

of 2016, I think it addresses the issues a couple members of the Committee had about this plate being outside the cap and in an exempt status. It does have an ending date where it will no longer be a competitive plate with the other specialty plates. I think this is a fair compromise with the Governor's office.

Chairman Carrillo:

Are there any questions from Committee members? [There were none.]

ASSEMBLYMAN HARDY MADE A MOTION TO AMEND AND DO PASS ASSEMBLY BILL 24.

ASSEMBLYWOMAN SPIEGEL SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN BROOKS WAS ABSENT FOR THE VOTE.)

Chairman Carrillo:

Assemblywoman Carlton will do the floor assignment on A.B. 24.

Assembly Bill 111: Revises provisions related to special license plates for disabled veterans. (BDR 43-530)

Vance Hughey, Committee Policy Analyst:

Assembly Bill 111 requires that special license plates for disabled veterans be inscribed with the international symbol of access, that blue and white wheelchair emblem ([Exhibit E](#).) No amendments have been proposed.

Chairman Carrillo:

Are there any questions from Committee members? [There were none.]

ASSEMBLYWOMAN SPIEGEL MADE A MOTION TO DO PASS ASSEMBLY BILL 111.

ASSEMBLYMAN HEALEY SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN BROOKS WAS ABSENT FOR THE VOTE.)

Chairman Carrillo:

Assemblywoman Spiegel will do the floor assignment on A.B. 111. We will open the hearing on Assembly Bill 151. I would like to welcome Assemblywoman Bustamante Adams to Transportation.

Assembly Bill 151: Provides for the establishment of goals for the participation of disadvantaged business enterprises and local emerging small businesses in contracts with the Department of Transportation. (BDR 35-776)

Assemblywoman Irene Bustamante Adams, Clark County Assembly District No. 42:

Thank you for the opportunity to present A.B. 151 ([Exhibit F](#)). As noted on the bill, you can see it is by request. It is a privilege to bring this piece of legislation forward on behalf of the business owners in my district. District 42 in Clark County has one of the highest concentrations of small business owners and I am proud to be their representative. During the interim, I worked with a group of business owners and the Department of Transportation (NDOT) to review the issue that was brought forth. Assembly Bill 151 is a solution we are proposing. It was a collaborative effort. Joining me are Rudy Malfabon, Director of NDOT and Yvonne Schuman, who is a civil rights officer for NDOT. They will give you an overview of the Disadvantaged Business Enterprise (DBE) program so that you can make an informed decision when we go through the bill.

Rudy Malfabon, P.E., Director, Department of Transportation:

This is a program from the United States Department of Transportation for their federal aid highway projects ([Exhibit G](#)). We work primarily under the Federal Highway Administration (FHA) and Federal Transit Administration. They set forth the requirements of the program. One of them is business size limitation; gross receipts of \$22 million over a three-year average. The owner's personal net worth cannot exceed \$1.32 million and majority ownership must be 51 percent or greater by a disadvantaged person. These are usually minority- and women-owned firms.

The FHA sets up the DBE certification process, which covers all the requirements. In Nevada, we follow a Unified Certification Program (UCP). Several other agencies deal with federal aid projects that are members of the UCP. They have an application review process and conduct an on-site review of the business to make sure the owner is indeed the owner, and they are making business decisions on a day-to-day basis for the company. The DBE confirms annually that they are still within the size and personal net worth limitations, and ownership has not changed. Members of the UCP include

NDOT, McCarran International Airport, Reno-Tahoe International Airport, Washoe County Regional Transportation Commission (RTC), RTC of Southern Nevada, and Carson Area Metropolitan Planning Organization (CAMPO).

There is a goal setting process so we have program goals for our agency as a DBE program. That is approximately a 10.2 percent program goal achieved through both race-neutral and race-conscious measures. Race-neutral means there is no penalty if the goals in that contract are not met. With race-conscious programs you focus on achieving the goal. You have specific penalties in not awarding the project to the low bidder if that low bidder is showing they are meeting the goal and providing good faith effort towards meeting the DBE goal on the contract. In determining what the goal is for a specific contract, we look at the bid items. The Department of Transportation identifies discrete elements of work; cubic yards of concrete, pounds of steel, tons of asphalt, and tons of gravel, on a line item basis. We identify what types of subcontractors are available. Will they perform the work for those bid items? We look at who is ready, willing, and able in that area of the state. We get a percentage of the total contract amount by determining how much of that work could be subcontracted to DBE firms. We might tweak it a little bit, but we have a DBE established goal. We run that by the FHA division office here in Carson City to get that goal into our contract. Goal setting is also used on engineering contracts. They tend to be less of a bid item, like what you see on construction contracts, but more of a percentage basis for professional services by engineering contractors.

There must be documentation on bid day to show the DBE goal is not met. That documentation must be submitted so that we can assess whether the contractor who is bidding on the contract is putting forth the effort to try to subcontract the work to DBEs. We do our best to set a reasonable goal and look at the specific items of work on that contract. We look at several factors to determine whether the contractor exhibits a good faith effort. Did they advertise in the newspaper and minority publications? Did they have conversations or give information to those firms that are DBE-certified firms? Are they allowing sufficient time for a response? A few hours before bid might not be sufficient time to get a good bid to the prime contractor. We look for that documentation of the steps taken to meet the goal. We cannot give a one-size-fits-all explanation on what comprises good faith effort. If we saw a second low bidder meeting the goal and the first low bidder was not meeting the goal, that tells us something could be looked into.

There are certain rules from the FHA on what you can count. You can use 100 percent of the dollars paid towards achieving the goal, if a DBE subcontractor performs the work. If it is a trucking company, you can count

the trucks owned and operated by that DBE firm plus up to one leased truck for one truck owned. There are special rules for trucking. For materials suppliers you can count 60 percent of the amount paid.

We have to withstand a challenge in court. Since DBE is a federal program, it would be heard in federal court. We have to do a disparity study that provides statistical evidence that there is the basis for the goal on our projects. We look at who is certified and who is not. We use some minority-owned and women-owned firms that have not been certified as DBEs. We look at that in the analysis of how many firms are getting work from NDOT. We look at availability versus utilization numbers. We look at other non-discriminatory barriers so maybe there are areas we can take into consideration in that analysis. We try to focus on narrowly tailoring the goals because of federal decisions in the Ninth Circuit Court of Appeals. They have heard challenges to the DBE program. We try to abide by those legal decisions resulting from the challenges. A study of disparity for NDOT contracts was finished in 2007. For a short time, we went to race-neutral goals and then recently have gone back to race-conscious goals on our projects. We are doing an update to the disparity study. We have a stakeholder group, which includes prime contractors, subcontractors, and suppliers, to give us some guidance on that study and keep them informed how we conduct the study.

We do outreach training and application assistance for DBEs. We have public meetings and invite prime contractors and minority contractors. We let them talk and make contract and subcontract deals. We also provide education on bonding and talk to financial institutions to set up short-term lending programs.

We have a DBE website that provides resources to DBEs. It gives them our program plan as the Department of Transportation, the rules and regulations, and the application forms to be completed. There is a database of certified DBEs so the prime contractors can search that database to get contact information for firms that are certified. We have heard from prime contractors that they contact somebody on the DBE database and get no callbacks so they assume they are out of business. If a company goes out of business, they do not always inform us. We try to do improvements to that process to purge companies that have gone out of business.

Chairman Carrillo:

Are there any questions from Committee members? [There were none.]

Assemblywoman Bustamante Adams:

The definition in section 2 refers to disadvantaged business enterprise. That is described in federal law.

Section 3 describes the 2007 disparity study and provides a reference to a strong base of evidence demonstrating discrimination. It also outlines that the Department should continue to use race-neutral and gender-neutral efforts to eliminate discrimination.

Section 4 outlines the establishment of goals for awarding of contracts for DBEs and local emerging small businesses. It applies to construction and the architectural, engineering, and planning services. It also states that the goals will be consistent with the goals required for similar projects that receive federal funding.

Section 5 defines the review process and the reporting of the progress for accountability purposes.

Assemblyman Hogan:

Has there been any success in attracting Native American-owned businesses?

Yvonne Schuman, Civil Rights Officer, Nevada Department of Transportation:

We do have Native American DBEs. I do not know the number that we have.

Assemblyman Paul Anderson:

As I read the bill, we use the term discrimination. It appears that NDOT has been actively disengaging with some of these folks. When you look at some of NDOT's results, it does not appear to be the case. Are we defining discrimination as minority-owned businesses that have not been getting as much business as we had hoped they would be? Alternatively, is it simply a matter of we have been actively excluding them?

Rudy Malfabon:

Based on the analysis and the disparity study, it gives you a percentage of how much of the market is DBE firms that are ready, willing, and able to do the work and how much percentage they are getting out of the dollars spent on federal aid contracts. It is not that we are not helping or discriminating against them, that is the way it is defined in the federal process of statistical analysis.

Assemblyman Paul Anderson:

Are we also doing this to comply with federal regulations? Are there any federal dollars tied to us moving forward with this legislation?

Rudy Malfabon:

This is only on the state-funded projects. We are already implementing the DBE program on a federal level. There would not be a penalty for not implementing.

Assemblyman Paul Anderson:

Are we implementing the same program we already have on the federal level to apply to state projects?

Rudy Malfabon:

Yes.

Assemblyman Paul Anderson:

Is that a dollar amount?

Rudy Malfabon:

Yes, it would be above \$250,000. We have approximately \$19 million in projects in the next fiscal year. While it is not established yet, it is about 20 projects. Our annual work program has not been approved yet because of the implementation of a new federal transportation bill, which gave the Las Vegas and Reno area some more time to implement. We are in the process of approving the annual plan. Our transportation board will approve it in May of this year.

Assemblyman Sprinkle:

Do you have an estimate in the increase of projects that would meet these standards?

Rudy Malfabon:

Yes, roughly 20 projects at about \$20 million. Most of them are going to be the simple, smaller, maintenance-type overlays or surface treatments on the roadway. Some of them are intersection improvements or safety improvements such as putting in concrete median islands. They are all above \$250,000 and most of them are less than \$1.5 million.

Assemblyman Sprinkle:

You said your work program would not be completed until May. Do you have a general estimate of what percentage of total dollars the 19 projects would be?

Rudy Malfabon:

Our overall program is going to be about \$350 million. It would be \$20 million of that \$350 million. The majority of our contracts are federal aid contracts.

Assemblyman Hardy:

Would you go through the process of how the goal works with major projects?

Rudy Malfabon:

If there is any federal funding used, NDOT looks at discrete elements or phases of the project. We have the environmental phase, the preliminary engineering phase, and the construction phase. In major projects, we may have right-of-way acquisitions, which involves purchasing private property for that project to be constructed on or obtaining temporary easements. Any time we use federal dollars in any of those phases of project delivery, that federalizes the project, and we have to have the DBE program applied. Other federal rules, such as environmental clearances, may also apply.

Assemblyman Hardy:

What is the goal federally for the state? What did we set as the goal? Is this planning to match that exactly?

Rudy Malfabon:

It is currently about 10.2 percent. Primarily we have seen goals that are approximately 8.5 to 9 percent range at the project level. It depends on what the elements of the project are. The achievement of the goal on a program level has been 7 percent. We are trying to make strides toward achieving 10 percent. Through the disparity study, we might determine that 10 percent is too high or low. The purpose of the disparity study is to help us establish a reasonable goal for Nevada on our federal aid contracts. The amount of work we are going to be adding, that is state funded, is the same type of work so we do not expect it to affect the DBE goal.

Assemblyman Hogan:

In terms of future achievement of these or higher goals, are we succeeding in identifying and opening conversations with the entire available minority firms, or is that a continuing problem? Do we think there are more out there, and we need to be more aggressive in finding them?

Rudy Malfabon:

We are trying to provide more venues, not only through our website and workshops, but also through training, to cast a wide net for firms out there that want to do business and get their foot in the door with NDOT. Many firms are learning there are other opportunities within the Department, not just the construction projects but service contracts as well. We are trying to do more with minority firms in general, but DBEs specifically on the federal aid program.

Assemblyman Paul Anderson:

How have we done it in the past on a state level? Have we not applied a DBE quotient? Will this alleviate any sort of difference of administrative costs

or burden on NDOT having to run two separate programs? Will we be able to use the same quotas?

Rudy Malfabon:

The same program requirements will be followed on state contracts. It will not add much of an administrative burden. When we had a much higher construction program, we were using the same staff so we did not add additional staff to Contract Compliance. That group administers the DBE program.

Assemblywoman Bustamante Adams:

Assemblyman Anderson used "quota." This is not a handout, so that word is inappropriate. It is a goal.

Chairman Carrillo:

If a company is licensed in Nevada and California, but their primary business is in California, would they qualify for any of this? My concern is having a company get a contractor's license, say they are sub-contracting minority- and women-owned companies, but they are getting jobs that are taking away from a locally owned company. How are you going to ensure that people from California, Utah, Arizona, or surrounding states do not get these contracts. I want to see Nevadans employed first.

Rudy Malfabon:

The certifying bodies in the UCP are primarily local agencies such as Washoe and Clark County RTCs, airports and NDOT. Because of the expense of moving into a new area and the mobilization costs, you would not see the out-of-state companies interested in smaller contracts. Because it is a federal program, DBE does not restrict it to local only.

Chairman Carrillo:

In this economic downturn, we are seeing people who normally would not have come from out of state. They realize their state is facing the same issues. Whether or not the size of the contract is the issue, a buck is a buck. We are trying to help Nevadans first.

Assemblyman Hardy:

Would the Nevada bidder's preference in statutes also fit with this?

Rudy Malfabon:

Yes, because the bidder's preference on state-funded contracts would apply. That would give our local contractors a leg up in the competition.

Assembly Committee on Transportation

March 12, 2013

Page 15

Assemblywoman Bustamante Adams:

I am bringing this forward on behalf of requests of business owners who are Nevadans.

Assemblyman Paul Anderson:

There is a fiscal note attached for \$134,000. Can you explain the cost of that if there are no real administrative changes?

Rudy Malfabon:

We established that about 15 percent of our contracts would be state-funded. We took the expenses that it takes to administer the program and attributed about 15 percent of that toward the state funded DBE program. The goal setting procedure and monitoring of the goal achievement are staff expenses that their labor would have to go toward.

Chairman Carrillo:

Are there any other questions from Committee members? [There were none.]
Is there anyone wishing to testify in support of A.B. 151?

Otto Mérida, representing the Latin Chamber of Commerce Nevada, Inc.:

We have been trying to get state goals for this type of project. It is long overdue. For the first time we have a Director for the Department of Transportation as well as people within the Assembly and State who are willing to take a look at this. It is right for us to get access to some of these jobs. It is important for our minority- or woman-owned contractors. We have more than 1,400 members in southern Nevada. Many of them are contractors. This is something they should be able to apply for and get some of these jobs. I was looking at your bill; it says the State wishes to supply all of its citizens with equal access to opportunities. This is a worthwhile goal of the State. It is something we should all support.

Secondly, the elimination of discrimination against the DBEs is something we agree on and should support. The Legislature has received and reviewed the disparity study from 2007. Disparity exists in the utilization of businesses owned by women and minorities. The state has been passive in terms of what has been going on. Going forward, I think the State will look at some of these issues and act upon them.

Chairman Carrillo:

Are there any questions from Committee members? [There were none.]

Peter Guzman, representing the Valley Center Opportunity Zone:

My name is Peter Guzman. Presently I am serving as Executive Director of the Valley Center Opportunity Zone, a community-based business assistance and development organization. In appreciation for the time commitments of the Committee and its members, I will only read into the record an executive summary of my remarks. However, I respectfully request that my complete written testimony be made part of the official minutes of this hearing. [Read from written testimony ([Exhibit H](#)).]

Chairman Carrillo:

Are there any questions from Committee members? [There were none.]

Brin Gibson, representing the Latin Chamber of Commerce Nevada, Inc.:

I am here on behalf of the Latin Chamber of Commerce. My firm represents the Latin Chamber pro bono. It is an honor for me to be here with Otto, Peter, and Assemblywoman Bustamante Adams in support of A.B. 151. This bill addresses inequities that are historically long-standing. It opens a pathway for folks who would not normally understand how to get into this kind of business. On a personal note, my wife is a woman and minority, so I have had the privilege over the last 19 years to interact with people of Hispanic background, and I can say this bill will help some of the inequities they have suffered.

Chairman Carrillo:

Are there any questions from Committee members? [There were none.]
Is there anyone in Las Vegas wishing to testify in support of A.B. 151?

Kenneth Evans, Private Citizen, Las Vegas:

I am here to testify in support of A.B. 151. As a senior manager once told me, "What gets measured, gets done." I am happy to see this legislation come forward with the thought that goals will be established and the program monitored moving forward. One of the pros of this legislation is that it does reference the disparity study that is factually based and in the process of being updated. It gives a concrete foundation for moving forward with this piece of legislation. There will be concrete, publicized goals for us to pay attention to and work towards. There will be regular reporting that the business community, state staff, and elected officials can monitor. That should ensure accountability and that progress is made. There is a provision in the bill to sunset this requirement once there is a demonstrated mutually agreed upon progress. All the tenants of a good bill exist here. I would like to conclude by saying this bill helps Nevadans because, when we keep in mind the business owners are indeed Nevadans themselves, then we are doing everything possible to help with employment and business ownership.

Chairman Carrillo:

Are there any questions from Committee members? [There were none.]
Is there anyone wishing to testify in opposition to A.B. 151?

John Madole, representing the Association of General Contractors, Nevada Chapter:

I would like to state for the record I am not here to object or oppose the objectives of what this bill seeks to implement. However, if I have concerns, it is my understanding that the only way I can register those concerns before the Committee is to sign in as opposition to the bill. I want this bill to be meaningful and actually do something. How can we pass this bill when we are standing in the middle of a full-blown crisis? There is no funding for highway work in Nevada. There is a bill before this body that will redirect an additional \$150 million dollars that is supposed to go to the highway fund. It looks like it will not go there but we are going to pass this bill and say "Hey, this is wonderful and we are going to give people work." How can you do it when you do not have any funding? We are tiptoeing around the problem and putting a Band-Aid on it. I spent more than 20 years in northern Nevada helping disadvantaged business, people get careers, and mentoring.

A few weeks ago, NDOT made a report before the NDOT board that said we need, in order to maintain Nevada's roads, an additional \$285 million a year. To the best of my knowledge, not one nickel of that money is going to go there. Now we are processing a bill that says we are going to help people get work with NDOT. No matter how many times you multiply something times zero, it is still zero.

Here is my suggestion. Section 3, subsection 6 reads, "Efforts by this State to support the development of businesses owned by women and minorities that are competitively viable will assist in reducing discrimination and creating jobs for all citizens of this State." How can they be competitively viable when there is no funding? I would suggest something like "Efforts by this State which include an acknowledgement that a substantial increase in State highway funding will be necessary to achieve the objectives of this bill." Without something like that, we cannot dance around this any longer. If you want to make this work, somebody has to belly up to the bar and say you need more money.

Assemblyman Healey:

From your statement, you are passionate about the fact that we do not have any funding. We all agree we would love more funding around the state. The intent I get from this bill is to put things into place to ensure that when those contracts are bid, the DBEs have a seat at the table and are given a fair

opportunity at those chances. In my opinion, the language you proposed would muddy this bill tremendously. It is a different conversation and bill about funding. This bill is not about getting NDOT funding, but to ensure that the DBEs are there. This type of legislation is always important to put on the books, even if there is not the ability to do a project today. We do not meet for another 18 months. In the event resources are made available, DBEs are given an opportunity and ensured a seat at the table.

Assemblyman Sprinkle:

Hypothetically, if funding were not an issue with NDOT projects, do I understand your comments to say that you would be in support of this bill or is there other opposition?

John Madole:

I support the objectives. I would like to be able to say truthfully that the bill would be meaningful. How does it muddy the water when you acknowledge that in order for this to be effective, you have to have funding? I think it strengthens the bill. How long are we going to dance around this problem? In order to give these people what you are trying to achieve, you have to begin somewhere by acknowledging that you need money. This is the time to do it.

Assemblywoman Carlton:

There was possibly \$19 million to \$20 million in projects. At a \$250,000 threshold for some of these locally emerging businesses, that is a significant payroll. I do not see this as not doing something; I see it as a first step. Yes, we would all like to have more money. I would like to take the budget that is sitting in my office and rearrange it significantly so that there is more money for highway projects. I know those put Nevadans to work and money in the pockets of Nevada families. We have to weigh the pros and cons. This \$19 million to \$20 million dollars is not what we have seen in the past. We got used to some numbers with many zeros behind them in the last couple of decades, especially your members who are large contractors and used to larger projects. This is aimed toward small contractors and smaller projects. I can see your point that you would like more. I still think it is important to keep these small Nevada companies working. Yes, we do want more money in the state. Until we are ready to address the revenue situation, I do not think that is going to happen.

Assemblyman Hogan:

I would like to express my appreciation of your testimony. It is unrealistic for us to support this bill and do so with the knowledge that we are looking at state funding that is planned, but grossly insufficient. We are looking at an agency that has performed exceptionally well in encouraging contractors and unions to

assure the employment of minority workers and women workers. They have achieved a great deal of credibility throughout the community for that work over the past few years. That gives us the capability to have a top-notch program to ensure these contracts reach the fullness of our industrial capability. It would be a shame to allow extremely conservative views of spending to negate all of the good intentions and highly successful efforts that we have made. This is such an important issue. We need to do everything we can to avoid permitting administration to put on this kind of show and ignore the fact that they are not going to permit these benefits to be achieved.

Chairman Carrillo:

Are there any questions from Committee members? [There were none.] Is there anyone who wishes to testify neutral on A.B. 151? [There was no one.]

Assemblywoman Bustamante Adams:

This was a collaborative effort. When the bill came out I did contact people in the construction field and we met to address our concerns and questions. I do want to thank Assemblymen Healey and Carlton for stating the fact that if it is about funding, we should contact our federal representatives. On behalf of my business owners who live in my district and the others who worked on this bill, I want to say thank you for letting us present.

Chairman Carrillo:

We will close the hearing on A.B. 151. We will open the hearing on Assembly Bill 176.

Assembly Bill 176: Revises provisions relating to the emissions testing of certain consigned vehicles. (BDR 40-964)

Chairman Carrillo:

I am sponsoring this bill. Assembly Bill 176 has to do with provisions relating to the emissions testing of consigned vehicles. The law currently requires sellers or long-term lessors of a used vehicle to provide the buyer or a long-term lessee with evidence of compliance certifying that the vehicle has passed an emissions test. This bill would exempt consignees from that requirement for any vehicle sold at a consignment auction, if the consignee informs the buyer that the buyer will be responsible for obtaining the emissions testing and they post a notice of this requirement at the auction site. Dan Musgrove is here to answer any questions the Committee might have.

Dan Musgrove, representing Barrett-Jackson Collector Car Auctions:

Barrett-Jackson has been in business since 1971 and is probably the world's greatest car collector auction company. They started in Scottsdale, Arizona. During the 2012 auction in Scottsdale, they had more than 270,000 people in attendance. They currently have auctions in Palm Beach, Florida, where more than 60,000 people attend, and Orange County, California where more than 55,000 people attend. Five years ago, they came to Las Vegas for the first time where more than 60,000 people have attended their auctions each year. January 20 of this year, Barrett-Jackson announced they would have an auction in conjunction with Hot August Nights in Reno. Barrett-Jackson has made a tremendous commitment to Nevada. One of the things they found doing business in Nevada is that there is no definition in statute for this public consignment auction.

Section 3 of the bill defines what a consignment auction is. It sets up the format as to how that works. Barrett-Jackson serves as the consignee. They are the go-between between the buyer and seller. For that reason, they encountered a challenge with Nevada law. When Barrett-Jackson came to Nevada, they got both new and used car dealer licenses to make sure they were well within compliance with state regulations. State law requires an emission control certificate for any car that goes through their auction. That is fine when you are acting as a used car dealer and the consumer needs that protection. We are dealing with cars that do not necessarily meet those requirements any longer. These are collector or classic cars; cars that candidly do not pass smog testing anymore because they are old, have big block engines, and are not driven much. People do not necessarily use these cars. When Barrett-Jackson came to the state of Nevada, they wanted to make sure they were doing everything by the book. They want to see if Legislature is willing to grant an exemption for this unique creature called a public consignment auction. We worked with the Department of Motor Vehicles, Washoe County Air Quality Management, Clark County Department of Air Quality, and Nevada Division of Environmental Protection to make sure they did not have any issues with us asking for an exemption for this smog certification.

Section 6, subsection 4 of the bill defines the responsibility of the buyer. Barrett-Jackson has auctions in 84 countries. Nearly nine out of the ten cars we sell will not be registered in Nevada. It was tough to meet Nevada requirements when those vehicles were just placed on a trailer and taken to wherever that collector was planning to house the vehicle. The Department of Motor Vehicles understood that, air quality understood that, they are neutral on this bill. Air quality has no issues with this process. We have come to you to ask for this narrow exception to the law to allow the smog certificate requirement to be exempt and ask that the buyers be aware of their own

requirements under the law. The Department of Motor Vehicles will follow with an amendment that we support. They will simply ask that whatever form we come up with to be given to the buyer is something they approve. We want to make sure we are in complete compliance with what DMV requires.

Assemblyman Hardy:

What are other states doing?

Dan Musgrove:

Barrett-Jackson took the lead on similar legislation that was passed in both Arizona and California. No legislation was required in Florida. We based this bill on what we did in Arizona.

Assemblyman Hardy:

Can you tell us how much revenue went through the Scottsdale, Arizona, auction?

Dan Musgrove:

In 2012, Barrett-Jackson sold over \$92 million worth of vehicles in Scottsdale, Arizona. If the buyer is an Arizona resident, Barrett-Jackson pays sales tax on those vehicles, as we do in Nevada. In January, the original Batmobile sold for \$4.2 million. The average auction sale is \$20,000 to \$25,000. There is a complete gamut of automobiles going through the auction. They are making a huge commitment to Nevada. They loved being at Mandalay Bay Hotel and Casino in Las Vegas and are very excited to be working with the City of Reno and Hot August Nights.

Assemblyman Paul Anderson:

You and I had a conversation about the title possession and whether or not any of the folks doing this type of consignment auction actually take title of the vehicle or are we just jumping the title in what you would normally assume is a consignment. If it is a consignment, is it the same as a normal buyer? If I sell my used car to another buyer I do not have to pay sales tax. Is there a sales tax transaction wrapped up in this because it is a consignment?

Dan Musgrove:

The process is unique to Barrett-Jackson. They will ask for a copy of the title and pictures of the vehicle. They will do a title search to make sure that vehicle is clean. That is the only time they take possession of the title other than to transfer it between seller and buyer. They do not own the vehicle at any time during that process. If it is purchased in Nevada, they will collect the sales tax from a Nevada buyer on behalf of the Department of Taxation.

Assemblyman Paul Anderson:

That is different from a person-to-person private party sale. In a private party sale, there is no sales tax required. If it is a dealer sale, there is sales tax required. If there is a requirement for Barrett-Jackson to be a dealer, does it require a sales tax transaction? You can follow up at some point with the Committee and me. They are jumping the title. They are taking it from consignor to consignee. I have sold cars through Manheim Auctions as a private party and they do a similar thing, but it is an internet auction. Are there any loopholes we are creating? Are we creating unfair advantages anywhere by exempting Barrett-Jackson?

Dan Musgrove:

That was one of the reasons we worked with DMV. It might be best if you ask that question of the DMV. We are using the Internet as part of our live auction scenario but Barrett-Jackson gives you the ability to physically examine, inspect, and look at the car if you choose to be at the auction. That is one situation that is different than a strictly Internet auction. My understanding is that Manheim goes from dealer to dealer. They are acting in the capacity of a dealer and would have to have a smog certificate. We are really serving as a go-between between private citizens. We are asking for this exemption and to put the burden on the buyer.

Assemblywoman Carlton:

I do not see the effective date on passage and approval. Are you talking about this year's Hot August Nights or next year's?

Dan Musgrove:

It would be this year. We would need it in effect by July 1 because we would have the auction in August of this year. Legislative Counsel Bureau could confirm the date. I believe if it is silent, it is July 1.

Assemblywoman Carlton:

Alternatively, is it October?

Dan Musgrove:

It might be October. We might need a friendly amendment from the Committee that it would be effective July 1, 2013.

Assemblywoman Carlton:

If we are developing a form that has to be approved by DMV, it may not be as quick as you think. You want enough time to make sure the form is developed and approved through the regulatory process and printed.

Chairman Carrillo:

Are there any questions from Committee members? [There were none.]
Is there anyone wishing to testify in support of A.B. 176? [There was no one.]
Is there anyone wishing to testify in opposition to A.B. 176?

George Ross, representing Copart, Inc.:

Copart operates all over the country. In Nevada, they operate a salvage yard and have a proprietary web-based, exclusively online auto auction. This is a classic situation when you have a bill that has a great purpose, but it managed to pick up some other things it really did not intend to pick up. In this case, because Copart has opted for up-to-date 21st century technology for its model, it does not have a live auction. The cars it would sell over the Internet would not get the advantage of this bill. There is a competitor company, which does something similar to Copart, that sells cars on consignment over the Internet. That company also sells through a live auction. That company would get the advantage of this bill whereas Copart would not. This bill, which has a very good purpose for Nevada, inadvertently sets up a situation where one company would get a competitive advantage over another. Neither company had anything to do with this bill. Working with DMV, we are drafting an amendment that addresses issues that were raised, but would not inhibit the objectives of this bill. I spoke with Mr. Dillard with DMV and I understand his concerns. We originally drafted a quick amendment, but we are not going to pursue it at this time because DMV pointed out some very important concerns with that amendment.

Assemblyman Paul Anderson:

Is the difference just because they are an online auction? Copart does do live auctions. I have been to them.

George Ross:

Copart does not do live auctions in Nevada. It is exclusively online through that web technology.

Assemblyman Paul Anderson:

Are we excluding the smog check for that particular entity as well? We are excluding the smog check on this bill.

George Ross:

That is correct. A fair amount of Copart's business is selling salvaged vehicles that do not require smog check. They have a fairly large business in selling fleets, et cetera that would require a smog check.

Assemblyman Paul Anderson:

Because these vehicles are being sold outside of Nevada, the buyer will be responsible for any smog check requirements. Barrett-Jackson sells cars all over the country so smog check, if it is required, will be required in whatever state the buyer takes the vehicle. You want the same exemption for Copart or other entities that are similar that send cars all over the United States.

George Ross:

We want the same set of rules for Copart as our competitors. Some of these auctions are live and some are Internet.

Assemblyman Paul Anderson:

If I become a used car dealer and normally would be required to have the same requirement to smog check a car before I sell it locally, but I sell it on eBay, am I now exempt?

George Ross:

I think you should ask DMV how that would work.

Assemblywoman Carlton:

You want a level playing field. Whether it is smog check or not, you want these two entities to have to comply by the same rules.

George Ross:

Yes.

Assemblywoman Carlton:

Therefore, we do not necessarily have to include them in an exemption as long as their competitors do not get that exemption also.

George Ross:

That is correct.

Assemblywoman Carlton:

I would have concerns about exemption on top of exemption on top of exemption. We do not know where that could possibly end. We could end up in a fiscal situation.

Chairman Carrillo:

Are there any questions from Committee members? [There were none.] Is there anyone in Las Vegas wishing to testify in opposition to A.B. 176? [There was no one.] Is there anyone who wishes to testify neutral to A.B. 176?

Deborah Shope, Services Manager III, Emission Control Program, Division of Compliance Enforcement, Department of Motor Vehicles:

The Department is neutral on this bill; however, we do have concerns with section 6, subsection 4(a) of A.B. 176 as it relates to the notice to buyer. DMV is recommending the language of the bill be amended to include a form approved by the Department. [Read from written testimony ([Exhibit I](#)).] The Department has discussed the amendment with Dan Musgrove who is representing Barrett-Jackson Auction Company, and he is in agreement with the amendment ([Exhibit J](#).)

Assemblywoman Spiegel:

There are folks who have eBay businesses where they sell things on consignment for others. If somebody based in Nevada is selling automobiles on eBay, where they are putting together the Internet advertising and monitoring, do they need to have a used car dealer license?

Troy L. Dillard, Interim Director, Department of Motor Vehicles:

That depends on whether or not they profit from the sale of the car. If they are acting purely as an advertising entity, they are being paid regardless of whether the car sells; there is no requirement for them to be a licensed used car dealer. If that compensation is contingent on the actual transfer of ownership of that car, then they are required to be a licensed dealer in Nevada.

Assemblywoman Spiegel:

With the amendment presented earlier, would they have an exemption?

Troy Dillard:

If the vehicle is sold to an individual and the vehicle is going to be located in a county that does not require emissions compliance, which are 15 counties in Nevada, or out of state, the requirement for the emissions certificate does not apply. This exemption precludes the dealer today from having to provide a valid emissions test if, in fact, that vehicle is going to be housed in Washoe or Clark Counties where testing is required. This would simply notify the individual that the emission test is still required for that registration to take place, unless they are exempt for other means such as classic vehicles prior to 1968. It would exclude the dealer from having to provide that passing emissions test to the purchaser. This provides notice at the location that this is an exception within the law and acknowledgement and understanding that a passing emissions test may be required.

Assemblywoman Spiegel:

If someone has an eBay business, is not technically a used car dealer, but is advertising the vehicle, would they still need to provide notice that the car would need a smog certificate if it were sold in Washoe or Clark Counties?

Troy Dillard:

The advertising business would not. That would be a private party using an advertising service to sell a car.

Assemblyman Paul Anderson:

If we were to have this particular exemption and a used car dealer is selling on the Internet, does that same exemption apply to these folks? Used car dealers sell on eBay as well.

Troy Dillard:

Mr. Ross contacted us with the concerns he expressed before the Committee. We do have additional concerns opening it up to the Internet process as we already have many more investigations related to Internet related sales and complaints. I think they are working on language that would specifically deal with some of those concerns. One of the things that was discussed is the way this current bill is proposed; the vehicle is available for inspection. The fact that you are going to disclose the emissions test is not conducive to the sale and is your responsibility to obtain. You do have the ability to inspect the car to see if some of that equipment is in place. Through the Internet, that is something that is lost.

Assemblyman Paul Anderson:

Barrett-Jackson does phone, Internet and local inspections. You can buy vehicles sight unseen through those same auction mechanisms. In general, I like the idea of making this available so businesses can come to Nevada. I am concerned about any other holes we may open that people will take advantage of. Not necessarily that they are going to skip out on a smog requirement, but the fact that you will sell a vehicle that generally would come with a smog certificate. The consumer would potentially have to spend money to get the car repaired to get a smog test.

Troy Dillard:

That is exactly our concern as well. If it is not constructed narrowly you could have unintended consequences and feasibly every dealer could list the vehicle on the Internet, you could take bids, and they will not have to complete the smog requirements.

Chairman Carrillo:

Section 6, subsection 4(a) of the DMV amendment states "Informs the buyer on a form approved by the department." I am assuming we are talking about the Department of Motor Vehicles?

Troy Dillard:

That is correct. In this chapter, the term "department" is short for "Department of Motor Vehicles."

Assemblywoman Swank:

I am guessing we are not the first state that has encountered this. I am wondering what Arizona has done to deal with this issue?

Troy Dillard:

We have not researched how other states are handling this.

Chairman Carrillo:

Are there any other questions from Committee members? [There were none.]

Dan Musgrove:

The legislation we are proposing was based on the Arizona law. I am not sure how they handle the Internet; I can ask our legal counsel in Arizona. Barrett-Jackson is based out of Scottsdale, Arizona. We do not have an opinion on the Internet issue; we want to make sure DMV is okay with the bill as it continues forward. It is important for Barrett-Jackson to comply with all the state requirements.

Chairman Carrillo:

We will close the hearing on A.B. 176. Is there any public comment?

**Jeanette Belz, representing the Association of General Contractors,
Nevada Chapter:**

I have a footnote on A.B. 151. I chased Assemblywoman Bustamante Adams down the hallway because I was concerned about her last comments. There was a misperception she was going to relate to Chairman Carrillo. When she pulled a group together, she was under the impression that the Association of General Contractors is a global term and the Las Vegas chapter representative represents the Nevada Chapter as well. They do not; we are separate organizations and deal with things often in common, but separately. We were not invited to that meeting. I wanted to make you aware that we did email Assemblywoman Bustamante Adams last night and let her know what we were going to do.

The meeting is adjourned [at 5:14 p.m.].

RESPECTFULLY SUBMITTED:

Jacque Lethbridge
Committee Secretary

APPROVED BY:

Assemblyman Richard Carrillo, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Transportation

Date: March 12, 2013

Time of Meeting: 3:26 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 14	C	Vance Hughey, Committee Policy Analyst	Work session document
A.B. 24	D	Vance Hughey, Committee Policy Analyst	Work session document
A.B. 111	E	Vance Hughey, Committee Policy Analyst	Work session document
A.B. 151	F	Assemblywoman Irene Bustamante Adams, Clark County Assembly District No. 42	Fact Sheet
A.B. 151	G	Rudy Malfabon, P.E., Director, Nevada Department of Transportation	Disadvantaged Business Enterprise (DBE) PowerPoint
A.B. 151	H	Peter Guzman, representing the Valley Center Opportunity Zone	Written testimony
A.B. 176	I	Deborah Shope, Services Manager III, Emission Control Program, Compliance Enforcement Division, Nevada Department of Motor Vehicles	Written testimony
A.B. 176	J	Deborah Shope, Services Manager III, Emission Control program, Compliance Enforcement Division, Nevada Department of Motor Vehicles	Proposed amendment