

**MINUTES OF THE
SENATE COMMITTEE ON TRANSPORTATION**

**Seventy-Seventh Session
May 13, 2013**

The Senate Committee on Transportation was called to order by Chair Mark A. Manendo at 10:08 a.m. on Monday, May 13, 2013, in Room 2135 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. Manendo, Chair
Senator Kelvin Atkinson, Vice Chair
Senator Pat Spearman
Senator Joseph P. Hardy
Senator Donald G. Gustavson

GUEST LEGISLATORS PRESENT:

Assemblywoman Dina Neal, Assembly District No. 7

STAFF MEMBERS PRESENT:

Jered McDonald, Policy Analyst
Darcy Johnson, Counsel
Melodie Swan-Fisher, Committee Secretary

OTHERS PRESENT:

Richard J. Nelson, P.E., F.A.S.C.E., Assistant Director, Operations Division,
Nevada Department of Transportation

Chair Manendo:

We will open the hearing on Assembly Bill (A.B.) 263.

ASSEMBLY BILL 263 (1st Reprint): Revises provisions governing bidding on certain highway projects. (BDR 35-792)

Assemblywoman Dina Neal (Assembly District No. 7):

I was asked to sit on an advisory group during the interim for a new availability and disparity study being conducted by the Nevada Department of Transportation (NDOT). Its most recent disparity study, "Availability and Disparity Study," which I have distributed ([Exhibit C](#)), was published in 2007 and covers 1999 through 2005. Page 4 of the executive summary of [Exhibit C](#) says of barriers in obtaining prime contracts, "Based on interviews, contract sizes, prequalification requirements and bonding requirements for NDOT construction work often preclude small firms that bid as primes in the private sector from pursuing NDOT prime contracts."

Prequalification requirements for public highway projects are addressed in *Nevada Revised Statute* (NRS) 408.333. When I learned this law had not been changed after the 2007 study was released, I decided to correct the oversight in A.B. 263 by adding the words "and any other comparable experience" to the end of subsection 1 of section 1. The idea behind this is to allow small firms to obtain additional experience. Without experience, firms are not able to bid on highway projects. Small businesses cannot build their contract experience. This is a constant impediment to their growth. The addition of these words means firms must have experience in the same category of projects for which they wish to bid.

After discussions with Mr. Madole of the Nevada Chapter of The Associated General Contractors of America (AGC), I added a proposed subsection 2 to section 1.5 of A.B. 263. It involves access to highway construction, reconstruction, improvements and maintenance projects estimated to cost \$250,000 or less. This was a small step to help firms, through statute, finally obtain comparable experience in efforts to become prime contractors.

I want to be assured that I do not leave this Session without working on a problem that is nearly 20 years old.

Chair Manendo:

A 20-year barrier seems to be addressed in several bills this Session. I, too, am working on a bill to fix a 20-year-old problem.

Senator Spearman:

The threshold of \$250,000 for public works projects sounds similar to information we heard last Friday. During this Session, we have discussed

several bills that appear to be similar to A.B. 263. Is there a way to develop a matrix for these bills? Having several bills with similar language tells me we have a systemic problem we are attempting to fix with patches. Does that make sense to you?

Assemblywoman Neal:

Yes, it does. The 2007 disparity study was criticized for not telling the full story. Assemblywoman Irene Bustamante Adams, who also served on the advisory group, is sponsoring A.B. 151.

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)

It may be one of those bills you mentioned, Senator Spearman. As members of the advisory committee, we can suggest that new legislation be included in the study. Your matrix suggestion is a good point.

Furthermore, the NDOT Civil Rights officer collects information, as reflected in the NDOT report, "Disadvantaged Business Enterprise Program" ([Exhibit D](#)). Operating under federal law, this office is capturing more data that could be used in a matrix. The disparity study reported the percentages of firms receiving federal contracts through the Disadvantaged Business Enterprise Program from 1999 through 2005. The results could be used as the basis for a matrix. Firms owned by women received 3.8 percent of the available contracts. Native American firms received 0.3 percent; Hispanic-American firms, 2.8 percent; Asian-Pacific American firms, 0.1 percent; Black-American firms, 0.1 percent; and firms owned by disadvantaged white men, less than 0.1 percent. Apparently, companies in the last category were either not disadvantaged or found themselves in the same position as firms owned by Black Americans and Asian-Pacific Americans. These figures could be the basis for the matrix. The new study should show how these groups have moved forward since 2005.

Assembly Bill 263 gives meaning to the prequalification measurement. With passage of this bill into law, we will be able to see how disadvantaged businesses participate in NDOT contracts over time. What the matrix should show is growth in their numbers compared to those in the 2007 disparity study, as long as barriers to participation are removed.

Senator Spearman:

The study was completed in 2005 and released in 2007. Categories that will have grown since then are veteran-owned businesses and those that allow preferential hiring for veterans. How do we take that which is informational and make it aspirational? What is the baseline? Data are available. Other states are working to expand their small to medium enterprises. The 2007 study contains old data.

Assemblywoman Neal:

The dated study can be relevant because a remedy was never implemented to address this finding. We spent at least \$100,000 on the disparity study but did not enact a legislative remedy. Because NRS 408.333 was never changed, the data are a valid baseline as we will examine what happened between 2005 and 2013 in the absence of statutory change. How did Nevada achieve the federally mandated goal for the disadvantaged business enterprise program when it had a statute that created a barrier to competition?

Senator Spearman:

I am not saying the study is not valid. We need to take the study further.

Assemblywoman Neal:

We do. I have looked at the situation in Illinois. That state has been progressive in its civil rights language. It has a mentor-protégé program for disadvantaged businesses. While conducting my research, I found information that NDOT intended to implement such a program about 5 years ago under the former director, Susan Martinovich. I am not sure what happened to it, but NDOT is in the process of starting the program this summer. A mentor-protégé program assists small businesses move through the contract process with an experienced prime contractor. This is just one example of how our State is moving forward to address the disparities.

Richard J. Nelson, P.E., F.A.S.C.E. (Assistant Director, Operations Division, Nevada Department of Transportation):

We have worked with Assemblywoman Neal on the wording of A.B. 263. The bill does not require a disadvantaged business to list experience when bidding on contracts under \$250,000. This keeps NDOT from placing a requirement for prior experience on such contracts. In theory, and I believe in practice, firms will be given opportunities to gain experience in highway public works.

Senator Hardy:

Assemblywoman Neal mentioned the original disparity study cost \$100,000. Was the study limited to NDOT's issues with challenged businesses, or did it include other issues you would like to address?

Mr. Nelson:

That was the initial disparity study and was specific to NDOT.

Senator Hardy:

What did the State do with the findings in the rest of the study? Were those disparities addressed statutorily?

Mr. Nelson:

I was not involved in the initial study. However, my understanding is that the study was used to identify groups experiencing discrimination and lack of work. It becomes more complicated and convoluted when considering the ruling of the U.S. Court of Appeals for the Ninth Circuit and steps NDOT took after that. One of the steps has been the creation of a civil rights officer position. She is responsible for developing new programs such as we are discussing now. We expect to see more movement in this area as the current disparity study is prepared. I wish I had a better answer for your question about what happened after the former study was released, but I do not.

Senator Hardy:

I suspect you will.

Chair Manendo:

We will close the hearing on A.B. 263 and open the work session on A.B. 117.

ASSEMBLY BILL 117 (2nd Reprint): Revises provisions governing rules of the road. (BDR 43-566)

Jered McDonald (Policy Analyst):

I will read the work session document ([Exhibit E](#)) for A.B. 117.

SENATOR HARDY MOVED TO DO PASS A.B. 117.

SENATOR GUSTAVSON SECONDED THE MOTION.

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THE MOTION PASSED UNANIMOUSLY.

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Chair Manendo:

Having no other business on the agenda, I adjourn the meeting at 10:41 a.m.

RESPECTFULLY SUBMITTED:

Jennie F. Bear,
Committee Secretary

APPROVED BY:

Senator Mark A. Manendo, Chair

DATE: _____

| <u>EXHIBITS</u> | | | | |
|------------------------|----------------|-----|-------------------------|--|
| Bill | Exhibit | | Witness / Agency | Description |
| | A | 1 | | Agenda |
| | B | 1 | | Attendance Roster |
| A.B. 263 | C | 408 | Assemblywoman Dina Neal | Availability and Disparity Study, Nevada Department of Transportation |
| A.B. 263 | D | 49 | Assemblywoman Dina Neal | Nevada Department of Transportation Disadvantaged Business Enterprise Program |
| A.B. 117 | E | 1 | Jered McDonald | Work Session Document |