

**MINUTES OF THE  
SENATE COMMITTEE ON TRANSPORTATION**

**Seventy-Seventh Session  
May 27, 2013**

The Senate Committee on Transportation was called to order by Chair Mark A. Manendo at 10:07 a.m. on Monday, May 27, 2013, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, 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 Irene Bustamante Adams, Assembly District No. 42  
Assemblywoman Lucy Flores, Assembly District No. 28

**STAFF MEMBERS PRESENT:**

Jered McDonald, Policy Analyst  
Darcy Johnson, Counsel  
Jennie F. Bear, Committee Secretary

**OTHERS PRESENT:**

Rudy Malfabon, P.E., Director, Nevada Department of Transportation  
Peter Guzman, Treasurer, Latin Chamber of Commerce Community Foundation  
Mike Draper, VINtek  
Josh Hicks, DealerTrack Processing Solutions, Inc.  
Troy L. Dillard, Director, Department of Motor Vehicles

**Chair Manendo:**

We will open the hearing on Assembly Bill (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)

**Assemblywoman Irene Bustamante Adams (Assembly District No. 42):**

I am sponsoring A.B. 151 on behalf of the small business owners of my district. Assembly District No. 42 has a high concentration of small business owners. During the interim, I met with this group of people and the Nevada Department of Transportation (NDOT) to review the issue and develop a solution. The problem involved a documented history of unfairness concerning NDOT contracts. Our solution is to ensure nondiscrimination in the awarding and administration of these contracts and to foster participation of local disadvantaged small businesses within NDOT projects. The bill proposes the current federal requirements for transportation projects be extended to State-funded programs to help disadvantaged business enterprises (DBEs) and local emerging small businesses.

Under A.B. 151, the NDOT would establish goals. One is to create a level playing field on which DBEs can compete fairly for contracts. The second is to remove barriers to participation of disadvantaged small businesses in contracts. The third goal is to ensure only businesses that fully meet eligibility standards are permitted to receive any benefits from the program created by this bill.

Assembly Bill 151 would not use any quotas, set-asides or preferential treatment. I repeat that there will be no quotas and set-asides. The bill only seeks to give DBEs the opportunity to compete alongside non-disadvantaged businesses for projects. Drafting this bill was a collaborative effort with NDOT.

**Rudy Malfabon, P.E. (Director, Nevada Department of Transportation):**

I will read my prepared testimony ([Exhibit C](#)).

**Chair Manendo:**

What is the definition of a disadvantaged business?

**Mr. Malfabon:**

The definition is based on ownership criteria. Companies must be 51 percent or more minority-owned or woman-owned. The definition of a small business does not have race or gender ownership restrictions. Within the DBE program at NDOT, the small business element is race- and gender-neutral.

**Chair Manendo:**

Does A.B. 151 target small businesses or disadvantaged businesses?

**Assemblywoman Bustamante Adams:**

It is a combination of both. In another bill I am sponsoring, A.B. 294, the definition of "local emerging small business" is highlighted.

**ASSEMBLY BILL 294:** Revises provisions relating to economic development.  
(BDR 27-777)

We want to develop a certification program for local emerging small businesses in Nevada that considers the number of employees, gross receipts, for-profit status and other provisions. Most small businesses are owned by minorities and women. The bill is not limited to these companies, however.

**Senator Hardy:**

What is the definition of a small business that is capable of handling a State project? How big a State project could a small business be able to handle?

**Mr. Malfabon:**

We have adopted the definition of small business from the U.S. Small Business Administration (SBA) for the small business element of the DBE program. By doing this, we do not need to establish a separate certification process. We use the certification process from the federal level. As long as firms meet size and ownership limitations, such as having less than \$22.4 million in annual gross receipts and having less than \$1.32 million in personal net worth, they can be certified. If small firms have received the federal DBE certification, they are eligible to bid. Each firm decides whether to bid on State projects.

**Assemblywoman Bustamante Adams:**

The federal level has a definition for small business from the SBA. I am proposing legislation for Nevada to identify local emerging small businesses with different limitations than those used in the federal definition. Whereas the

federal cap for a company's gross receipts is about \$22 million, the Nevada cap will be much less, between \$1.7 million and \$3 million. I do not have the details with me, but the proposed amounts for our State will be much less than the federal level. The goal is to ensure the small businesses are local, from Nevada, not California nor Colorado, for instance. Additionally, parameters will require the place of business to be in our State. The business cannot be a subsidiary or a chain. My proposal has not been adopted, but is being considered in another bill.

**Senator Hardy:**

The other bill is not related to the NDOT. Is that right?

**Assemblywoman Bustamante Adams:**

Yes.

**Senator Hardy:**

How many State projects are there for which small businesses could qualify, be certified or capable of performing? I do not understand the certification process as used in this situation. We have a list of State projects. How many of them, projects up to \$20 million in value, would be possible for a small business to complete? Will your other bill involve projects valued at less than \$20 million?

**Mr. Malfabon:**

Firms can qualify for any State-funded contract. We estimate that we only have 19 projects valued at \$20 million each funded entirely with State dollars. I am more familiar with the DBE program goal in my agency than the definition of emerging small businesses. Our program mainly involves firms bidding as subcontractors to prime contractors. In some of the smaller projects, small emerging businesses bid as prime contractors. This has occurred in District III with a company named Acha Construction LLC. It has been successful in receiving NDOT contracts for smaller projects.

**Senator Hardy:**

Am I correct in saying emerging small businesses currently working as subcontractors will be eligible to bid as prime contractors on projects valued up to \$20 million?

**Mr. Malfabon:**

The only requirement is firms be prequalified to bid as prime contractors. We do not prequalify subcontractors. Financial criteria such as stability, solvency and bonding are considered.

**Senator Hardy:**

A mechanism exists, therefore, for disadvantaged businesses to participate in the 19 projects currently valued up to \$20 million.

**Mr. Malfabon:**

These companies can bid now for such projects. The only new thing the bill does is place DBE goals on State-funded contracts. This will provide more opportunities for certified DBE firms to work on State projects as well as federally funded ones.

**Senator Hardy:**

Explain to me the difference between a quota and a goal.

**Mr. Malfabon:**

The DBE goal is established at a program level. Our annual program goal is based on the availability of firms and history of DBE usage. This is what the disparity study considers. It examines how often we have contracted with DBEs for professional services and construction contracts. The NDOT operates under a "race-conscious" program, so we must look at the ownership criteria when contracting with firms. A goal must be defensible in court if NDOT is challenged. In an analysis called "good faith effort," the apparent low bidder must justify why it did not meet the goal at the time of the bid. Using specific federal criteria, we look at efforts such bidders make. Occasionally, we award contracts to companies whose bids were not the lowest but which met the DBE goals. Our DBE program has been judged constitutional. We provide statistical evidence for all our contract award decisions. The goals apply at the program and project levels. Less than 10 percent of the work in a major project can be subcontracted to DBEs. One example of small jobs that can be subcontracted is traffic control. A quota, on the other hand, is a percentage that must be met regardless of substantiation or calculation. We implement the DBE program through a specific process so our decisions are defensible in court.

**Senator Hardy:**

From what you have said, it appears the goal applies at the subcontractor level by limiting with whom the general contractors can subcontract.

**Mr. Malfabon:**

Yes. Before we release contracts for bid, we consider what work can be subcontracted and what disadvantaged business enterprises are available. This helps us set a reasonable and achievable goal. In some cases, no firms meet the DBE goals. This has occurred with rural projects because some of the DBEs prefer to work in urban areas due to higher costs for rural travel.

**Senator Hardy:**

Do all the eligible bidders know the expectations from the outset of bidding?

**Mr. Malfabon:**

Yes. We try to inform everyone statewide. In the disparity study process, we have been meeting with prime contractors and subcontractors to dispel the misperception that NDOT will never award contracts to those who do not meet the DBE goals. Awards are based on analyses of good faith effort at the time of the bids.

**Senator Hardy:**

I appreciate that.

**Assemblywoman Bustamante Adams:**

We also must keep in mind that federal goals already exist. If a Nevada project has even \$1 of federal funding, these goals apply. Assembly Bill 151 proposes we use these goals with State-funded projects valued up to \$20 million.

**Chair Manendo:**

Do those projects have any federal money attached to them?

**Mr. Malfabon:**

No, they do not.

**Chair Manendo:**

Which projects are those?

**Mr. Malfabon:**

They generally are smaller projects such as pipe extensions on rural State routes, chip seals or other surface treatments, drainage, traffic control and other maintenance work. These projects usually cost \$1 million or less.

**Chair Manendo:**

Are those annual or biennial projects in the NDOT budget? How does it work?

**Mr. Malfabon:**

They are annual projects. Each of NDOT's three districts identifies maintenance needs yearly. Most of the projects are in the range of \$20 million to \$30 million.

**Chair Manendo:**

What companies are doing these projects now that may not be able to continue doing them, if this bill passes?

**Mr. Malfabon:**

We anticipate the prime contractors will have to subcontract more of the work. The non-DBE firms that do specialized work, such as electrical and striping work, will continue. Not many DBEs perform this kind of work.

**Chair Manendo:**

In a small county, would county road department employees perform the projects?

**Mr. Malfabon:**

Each county takes care of its own roads. The bill only involves NDOT, so it will not affect any county work.

**Senator Hardy:**

I like the reporting requirement contained in A.B. 151, which will help us understand what has been done before each session. The bill's effective date is October 1, but it seems NDOT already is implementing it at some level. Was the fiscal note removed because some of the provisions are already in place?

**Mr. Malfabon:**

Yes. The fiscal note was prepared when we thought another person would be needed to do the report. Now that our construction program has stabilized, no new staff will be needed.

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**Senator Hardy:**

That is great. I like the feature of NDOT reporting progress to us.

**Senator Gustavson:**

Other than the reporting aspect, it seems NDOT is already doing what is in this bill. Why do we need A.B. 151?

**Assemblywoman Bustamante Adams:**

The provisions in the bill reflect those already in place at the federal level but not at the State level. Assembly Bill 151 will apply only to State-funded projects.

**Peter Guzman (Treasurer, Latin Chamber of Commerce Community Foundation):**

We support A.B. 151 for several reasons. First, it sets goals for the State that are in place at the federal level. This is important. Second, any bill with the potential to create jobs for a group of people with high unemployment, the minority group, is something we should all support. Third, the bill does not have a fiscal impact on the NDOT. Mostly, A.B. 151 is a bill of inclusion, which is something for which we all are striving.

**Chair Manendo:**

We will close the hearing on A.B. 151.

SENATOR HARDY MOVED TO DO PASS A.B. 151.

SENATOR ATKINSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\* \* \* \* \*

**Chair Manendo:**

We will open the hearing on A.B. 309.

**ASSEMBLY BILL 309 (1st Reprint)**: Requires the Department of Motor Vehicles to contract for the establishment of an electronic lien system. (BDR 43-947)



**Assemblywoman Lucy Flores (Assembly District No. 28):**

Assembly Bill 309 allows the Department of Motor Vehicles (DMV) to enter into competitive private agreements with companies providing electronic lien transfer services. When people pay off their car loans now, they receive their car titles on paper. They must take these paper copies to the DMV for processing. This bill will help people process their titles electronically. This is the future. Many states already are doing this and perfecting the way in which they handle car titles. We want Nevada to be able to provide this service to its residents.

**Mike Draper (VINtek):**

I will read my written testimony ([Exhibit D](#)) in support of A.B. 309.

**Senator Hardy:**

The term "electronic lien system" is in the bill, but I do not see the acronym "ELT." What does the letter "T" represent?

**Mr. Draper:**

The "T" stands for "title." The acronym "ELT" means "electronic lien and title." This deals with electronic title management.

**Senator Hardy:**

Is there a difference between "title" and "system?" The word "system" is used in the bill.

**Mr. Draper:**

No, there is not a difference. We are referencing liens with this technology, primarily, but it can be applied to title management as well.

**Senator Hardy:**

The bill is not just related to titles, therefore. It involves a system.

**Mr. Draper:**

Yes. The DMV will issue a request for proposals for providers to implement the electronic lien and title management system. The system is based on computer software. Companies responding to the request could be ELT providers, such as the company I represent, a computer software developer or the car dealers' association. The DMV will select one or more of these contractors to develop the software system. In turn, the contractor or contractors will connect with all ELT providers nationwide that wish to participate. The system at the DMV will

be the hub. Consumers will be able to manage their liens online without going to the DMV office. This will save time and money for the DMV and consumers. Participation fees are negligible, averaging about \$2 to \$6 per lien, and are much more feasible than current practice.

**Senator Hardy:**

Who actually holds the paper with the odometer reading when a person sells his or her car? Can this be done electronically now?

**Mr. Draper:**

With a program like this, it can be done electronically. When a person pays off a car loan, the bank or lienholder will transfer the lien to that person electronically.

**Senator Hardy:**

This is prospective ... My paper liens will still be paper.

**Mr. Draper:**

Yes.

**Senator Hardy:**

Is there a fee to the DMV and a fee to the system when I transfer my paper version to an electronic version?

**Mr. Draper:**

There will not be a fee to the DMV. The contractor will charge the fees to the banks or titleholders. No model exists like this one. Other models have not charged the fees, however, because they are negligible.

**Assemblywoman Flores:**

Senator Hardy, you were describing a person-to-person transfer in a car sale. Section 1.3, subsection 6, of A.B. 309 states, "Except for persons who are not normally engaged in the business or practice of financing vehicles ... ." People who pay off their car loans or sell their cars to other people may go to the DMV in person to conduct the title business. They do not have to participate in the electronic lien system. The bill is designed mainly for those dealing with hundreds and thousands of transactions.

**Chair Manendo:**

Just before the Session started, I sold a car. I was wondering how this bill would have affected that experience.

**Senator Gustavson:**

I support new technology. It is fantastic, but we must be careful with security. You said the DMV would select one or more companies to develop software for the new system, but there already are states implementing similar systems. Has the software already been developed that would just need to be adapted to Nevada? Could the DMV do this in-house rather than contracting with a vendor?

**Assemblywoman Flores:**

The DMV could do it, but the cost would be prohibitive. By outsourcing the software development, the State will save money. Some of the cost will be recouped. A competitive process for a public-private partnership is a win-win situation for all parties.

**Mr. Draper:**

We approached the DMV to discuss the various models. The most prevalent model is for a state agency to do the work itself. Our DMV does not have the resources, however, and is supportive of the plan detailed in A.B. 309. Nevada will be the first state to have such a model. The software does exist, but it is proprietary. Because of this, the DMV would need to start from the ground floor anyway. To implement the system quickly and within the fiscal limits, this model will save the State money over time.

**Senator Gustavson:**

You say there is no cost to the State. Someone still has to pay for the development. Consumers may have to pay minimally. Do you have an example of the cost involved?

**Mr. Draper:**

The bill caps the fee at \$4. The fee might be passed to consumers, but mostly this has not been done since the fee is negligible.

**Senator Gustavson:**

This might yield savings for consumers.

**Mr. Draper:**

We have figured a cost of \$8 to \$12 per consumer when considering the time at DMV and cost of gas to drive there and so on. Even a \$4 fee will save consumers money.

**Senator Gustavson:**

The title is received electronically. How will it be an official document via the Internet?

**Mr. Draper:**

I am not qualified to answer your question, but two-thirds of all titles in the United States are managed this way. Other states have accepted these titles as official documents.

**Senator Gustavson:**

I would hate to have fraud involved in the process.

**Chair Manendo:**

How many states did you say already are using a similar system?

**Mr. Draper:**

Nineteen, and several states are in the process of developing such systems. We predict that all 50 states will have this capability within the next 10 years.

**Senator Spearman:**

The banking industry has technology now to protect mobile banking transactions from forgeries. Something like this likely is involved with the ELT process. I like A.B. 309 because it dovetails with my bill, Senate Bill 236, which requires State agencies to put their forms online.

**SENATE BILL 236:** Revises provisions governing state agencies. (BDR 19-769)

This will save the State money for paper, printing, time, postage and more. Additionally, I am asking State agency personnel to collaborate through technology to avoid the current situation in which most use different computer systems that are not linked. As the DMV considers vendors for the ELT process, I ask that they consider making the process conducive to interagency interfacing, if possible.

**Assemblywoman Flores:**

Your point is well taken. We should do this where there is an opportunity. We need to be careful, however, since this involves private information kept at the DMV. The information about liens and loans is sensitive. I am not sure it is possible to link with this kind of information.

**Senator Spearman:**

I am not suggesting we share this particular information. I want to see the vendors develop a way for the platforms used by State agencies to become interactive.

**Mr. Draper:**

The discussions that went into the creation of this bill have emphasized the need to secure the private and proprietary information within the new system. The intent is to look for areas of collaboration. The DMV has worked hard over the past few years to create efficiencies, more so or as much as any agency in the State. I expect it will do the same with this process.

**Senator Hardy:**

Did you say two-thirds of the states have this, or was it 19 states?

**Mr. Draper:**

Nineteen states have the system, which represents two-thirds of the lienholders in the Country. It includes the big states with the majority of the lienholders.

**Senator Hardy:**

Does the fiscal note dissolve, or will a future generation pay for the cost of it?

**Mr. Draper:**

The fiscal note was removed in the Assembly, except for the regular administration note that was included.

**Assemblywoman Flores:**

The bill went through the Assembly Committee on Ways and Means. We testified there that the fiscal note was removed.

**Senator Hardy:**

Will the DMV have to reduce its number of employees if this bill passes?

**Assemblywoman Flores:**

No. The bill will establish a system to work with lienholders and private partners.

I became involved in this effort because, after paying off my car loan, I have not been able to find my lien. It may be somewhere in my kitchen. Right now, I would pay someone \$4 to find my lien. The new system will benefit many people, saving them from the hassle I am experiencing.

**Josh Hicks (DealerTrack Processing Solutions, Inc.):**

DealerTrack Processing Solutions, Inc. is one of the major ELT providers in the Country. Our concerns in the development of the bill were allowing multiple providers to contract with the DMV for ELT services and protecting inadvertent sharing of confidential and proprietary information. The language was added to the bill. We support A.B. 309.

**Chair Manendo:**

How many companies are involved in this kind of business?

**Mr. Hicks:**

DealerTrack and VINtek are the two major providers. A few other companies are in this field as well.

**Troy L. Dillard (Director, Department of Motor Vehicles):**

The DMV supports A.B. 309. Another benefit of this bill will be to provide a better business environment in Nevada. Businesses will not have to wait as long for lien transfers. Dealers and consumers will save time.

Assembly Bill 309 deals with liens and the transfer of liens. It does not change the title process. Because the program involved with these transfers is batch file processing, no contractors will have access to the DMV records. The only information they will have is what the DMV sends them or what they already have a right to possess.

Expedited titles also have limited access. If Assemblywoman Flores wants to sell her car but cannot find her title, with the standard duplicate title process, it will take 11 to 14 days for her to obtain the title. Her buyer will not want to wait that long. The expedited title process included in A.B. 309 will only take 48 hours.

**Senator Hardy:**

Can a person obtain his or her title online instantaneously, or will it still take 2 days?

**Mr. Dillard:**

People cannot print their titles from the ELT system. Titles must be printed on title stock paper by the DMV. Private party sales are not part of this system because liens are not part of those sales. The bill allows quick turnaround for expedited titles.

**Senator Hardy:**

Could someone sell his or her car and have the lien transferred instantaneously if the title of the car is in the DMV system?

**Mr. Dillard:**

You can transfer the lien, but I would not say instantaneously. Information on the lienholder must still be sent to the DMV from the ELT provider.

**Senator Hardy:**

It seems there still is an advantage to signing your name and writing the odometer reading on a piece of paper when selling a car.

**Mr. Dillard:**

Yes, for a private party.

**Senator Hardy:**

Under this system, would a person ask for the title prior to selling a car to be able to sign it over to the buyer instantaneously?

**Mr. Dillard:**

That would be the easiest, most effective way. If you financed a car and your title was in the ELT system, the lienholder will release the lien on the title. You are entitled to receive a paper copy, or it can stay in the electronic file. If you trade in your car, you can transfer the title to the dealer through the ELT system.

**Senator Hardy:**

Can someone obtain the paper copy of the title without cost?

**Mr. Dillard:**

The costs for titles will not change. The fee is still \$20 to obtain a title.

**Chair Manendo:**

We have two representatives present from companies that are in this business. How will the DMV determine the vendor with whom it will work?

**Mr. Dillard:**

Each company has clients they represent. Their information is proprietary. They compete in the open market. The DMV will write the scope of work that is required. As long as vendors can meet the requirements, we can award more than one contract. By design, the process will not cost Nevada any money. The contractors must develop the links to the DMV database.

**Chair Manendo:**

How will the work be distributed? Will it be based on a rotation?

**Mr. Dillard:**

All contractors will have access to data file transfers to the DMV database. The DMV owns the information. The ELT companies only transfer information to and from the database. In effect, the DMV is the hub with all providers feeding to and from it.

**Chair Manendo:**

Will the DMV develop regulations for the ELT contractors?

**Mr. Dillard:**

I am not sure if regulations will be needed because A.B. 309 includes specific details already. Our staff will develop best practices. Most states are looking at this kind of process, if they do not have one already. It is considered a best practice by the American Association of Motor Vehicle Administrators (AAMVA). All jurisdictions in the United States and Canada participate in this organization. Its guidelines will be incorporated into our design, and we will look at what the other states are doing. There are different models, but the same outcomes.

**Chair Manendo:**

Do the guidelines cover safety concerns?



**Mr. Dillard:**

People must be registered with a service provider. This information is tracked. No one can go into the system and slap a lien on somebody's car. Security measures will be built into the process, which is part of AAMVA's best practices. Providers will have to comply with them.

**Chair Manendo:**

I want to make sure these measures are in place. We had a bill some time ago in this Committee that aimed to give more control to the DMV. It was worrisome. Some people thought it went too far. We need to have a balance.

**Mr. Dillard:**

The DMV database is valuable to many people. It contains a great deal of personal information on nearly every adult in Nevada. Our first priority is to maintain the security of this information. With any contract in which information can be released to third parties, as provided in statute, there are caveats for abuse of the information. All DMV contracts entail provisions for cancellation due to inappropriate use of the information by contractors.

**Senator Hardy:**

Will any jobs be eliminated with the new system?

**Mr. Dillard:**

This system will not eliminate jobs. We still will enter title data. The change is that we will not print lien titles. We will see cost reductions over time in the cost of paper and printer maintenance.

**Senator Hardy:**

Will the DMV personnel still have to process information by computer because the DMV is the hub of the system?

**Mr. Dillard:**

Yes. The DMV processes all title transfers.

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**Chair Manendo:**

We will close the hearing on A.B. 309. With no other business before the Committee, I adjourn this meeting at 11:19 a.m.

RESPECTFULLY SUBMITTED:

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Jennie F. Bear,  
Committee Secretary

APPROVED BY:

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Senator Mark A. Manendo, Chair

DATE: \_\_\_\_\_

<b><u>EXHIBITS</u></b>				
<b>Bill</b>	<b>Exhibit</b>		<b>Witness / Agency</b>	<b>Description</b>
	A	1		Agenda
	B	2		Attendance Roster
A.B. 151	C	1	Rudy Malfabon	Written Testimony
A.B. 309	D	1	Michael Draper	Written Testimony