

ASSEMBLY BILL NO. 151—ASSEMBLYWOMAN  
BUSTAMANTE ADAMS (BY REQUEST)

FEBRUARY 20, 2013

Referred to Committee on Transportation

SUMMARY—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)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to transportation; requiring that the Department of Transportation establish goals for the participation of disadvantaged business enterprises and local emerging small businesses in certain contracts relating to transportation projects; requiring that the Department evaluate each market in which those goals would be established before establishing the goals; requiring that the Department evaluate whether the goals remain necessary to eliminate disparities in the awarding to certain businesses of certain contracts relating to transportation; requiring that the Department submit biennially to the Governor and Legislature a report on those goals; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

1 Under existing federal regulations, the Department of Transportation is  
2 required to establish goals for the participation of disadvantaged business  
3 enterprises in contracts for transportation projects which receive federal funding  
4 and to which those regulations apply. (49 C.F.R. Part 26) **Section 4** of this bill  
5 requires that the Department establish goals for the participation of disadvantaged  
6 business enterprises and local emerging small businesses in: (1) contracts for  
7 certain transportation projects that do not receive federal funding for the  
8 construction, reconstruction, improvement or maintenance of highways; and (2) all



\* A B 1 5 1 \*

9 contracts for architectural, engineering and planning services. **Section 4** also  
10 requires that these goals be: (1) consistent with the goals required for similar  
11 projects that receive federal funding; and (2) based upon information about the  
12 market for which the goals are set.

13 **Section 5** of this bill requires that the Department regularly review information  
14 about the goals established pursuant to **section 4** and the markets for which these  
15 goals are set. **Section 5** also requires that the Department report biennially to the  
16 Governor and the Legislature as to whether these goals are being met and, if not,  
17 what efforts the Department is undertaking to meet the goals. If the Department  
18 determines that disparities no longer exist in the awarding of contracts for  
19 transportation projects to which **section 4** applies, and a discontinuation of the  
20 goals would be in the best interests of the State, **section 5** requires that the Director  
21 of the Department transmit to the Governor and the Director of the Legislative  
22 Counsel Bureau a statement of that determination and a report detailing the findings  
23 which justify that determination. **Section 7** of this bill provides that this bill expires  
24 on the earlier of: (1) September 30, 2023; or (2) the date 90 days after the date on  
25 which the Director of the Department transmits pursuant to **section 5** the  
26 determination and report which indicate that disparities no longer exist in the  
27 awarding of the relevant contracts.

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

1 **Section 1.** Chapter 408 of NRS is hereby amended by adding  
2 thereto the provisions set forth as sections 2 to 6, inclusive, of this  
3 act.

4 **Sec. 2.** *As used in sections 2 to 6, inclusive, of this act, unless*  
5 *the context otherwise requires, “disadvantaged business*  
6 *enterprise” has the meaning ascribed to it in 49 C.F.R. § 26.5.*

7 **Sec. 3.** *The Legislature hereby finds and declares that:*

8 1. *The State wishes to provide all of its citizens with equal*  
9 *access to opportunities for business formation and business*  
10 *growth.*

11 2. *The elimination of discrimination against disadvantaged*  
12 *business enterprises is of paramount importance to the future*  
13 *welfare of this State.*

14 3. *The Legislature has received and carefully reviewed the*  
15 *“Availability and Disparity Study” commissioned by the*  
16 *Department and published on June 15, 2007, that this study*  
17 *provides a strong basis of evidence demonstrating persistent*  
18 *discrimination against businesses owned by women and minorities*  
19 *and that this study demonstrates that:*

20 (a) *Disparities exist in the utilization of businesses owned by*  
21 *women and minorities in the same geographic markets and*  
22 *industry categories in which the Department does business;*

23 (b) *The State would become a passive participant in private-*  
24 *sector racial, ethnic and gender discrimination if it ceased or*  
25 *curtailed its remedial efforts against such discrimination;*



1 (c) *An overall pattern of disparities exists in the utilization of*  
2 *all racial and ethnic groups and both minority and nonminority*  
3 *women combined in all Department contracts;*

4 (d) *Evidence exists that discrimination in the private sector has*  
5 *depressed the formation and growth of firms among minority and*  
6 *nonminority women entrepreneurs; and*

7 (e) *Evidence exists of discrimination against minority and*  
8 *nonminority women business owners in the Nevada marketplace.*

9 4. *The Department should continue to use race-neutral and*  
10 *gender-neutral efforts to eliminate discrimination to the maximum*  
11 *extent feasible and should use only race-conscious and gender-*  
12 *conscious measures where necessary to eliminate discrimination*  
13 *that was not alleviated by race-neutral and gender-neutral efforts,*  
14 *and only as allowed under federal law.*

15 5. *Sections 2 to 6, inclusive, of this act continue and enhance*  
16 *efforts to ensure that the Department limits the burden on*  
17 *businesses which are not disadvantaged business enterprises by*  
18 *ensuring flexibility in the operations of the Department.*

19 6. *Efforts by this State to support the development of*  
20 *businesses owned by women and minorities that are competitively*  
21 *viable will assist in reducing discrimination and creating jobs for*  
22 *all citizens of this State.*

23 **Sec. 4.** 1. *The Department shall establish goals for the*  
24 *awarding of contracts to disadvantaged business enterprises and*  
25 *local emerging small businesses for:*

26 (a) *Highway construction, reconstruction, improvements and*  
27 *maintenance on projects estimated to cost \$250,000 or more that*  
28 *do not receive federal funding; and*

29 (b) *Architectural, engineering and planning services.*

30 2. *The Department shall ensure that the goals established*  
31 *pursuant to subsection 1 are:*

32 (a) *Consistent with the goals required for similar projects that*  
33 *receive federal funding; and*

34 (b) *Based upon information about the relevant market for*  
35 *which the goals are set.*

36 3. *The Department shall adopt regulations to define the term*  
37 *"local emerging small business" for the purposes of sections 2 to*  
38 *6, inclusive, of this act. When adopting regulations pursuant to*  
39 *this subsection, the Department shall determine whether other*  
40 *state agencies have adopted related definitions for similar projects*  
41 *and, if so, coordinate with those state agencies in defining the*  
42 *term.*

43 **Sec. 5.** 1. *The Department shall regularly review*  
44 *information about the goals established pursuant to section 4 of*  
45 *this act and the markets for which these goals are set.*



1       2. *The Department shall prepare a biennial report for the*  
2 *Governor and the Legislature and submit the report on or before*  
3 *December 31 of each even-numbered year. The biennial report*  
4 *must include, without limitation:*

5       (a) *All goals established by the Department pursuant to section*  
6 *4 of this act;*

7       (b) *Whether each goal established by the Department has been*  
8 *achieved; and*

9       (c) *For each goal established by the Department that has not*  
10 *been achieved, information on all efforts undertaken by the*  
11 *Department to achieve the goal.*

12       3. *If the Department determines that the information*  
13 *gathered pursuant to subsection 1 indicates that disparities no*  
14 *longer exist in the awarding of contracts to disadvantaged*  
15 *business enterprises and a discontinuation of the goals required to*  
16 *be established by section 4 of this act would be in the best interest*  
17 *of this State, the Director shall transmit to the Governor and the*  
18 *Director of the Legislative Counsel Bureau for transmission to the*  
19 *Legislature a statement of that determination accompanied by a*  
20 *report detailing the findings of the Department which justify that*  
21 *determination.*

22       **Sec. 6.** *The Department shall adopt such regulations as are*  
23 *necessary to carry out the provisions of sections 2 to 6, inclusive,*  
24 *of this act.*

25       **Sec. 7.** This act expires by limitation on:

26       1. September 30, 2023; or

27       2. The date 90 days after the date on which the Director of the  
28 Department of Transportation transmits to the Governor and the  
29 Director of the Legislative Counsel Bureau the statement and report  
30 required by subsection 3 of section 5 of this act,

31       ↳ whichever occurs earlier.

