

AMENDED IN ASSEMBLY MARCH 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 365

Introduced by Assembly Member Galgiani
(Principal coauthor: Senator Price)

February 14, 2011

~~An act to amend Section 71 of the Streets and Highways Code, relating to highways.~~ *An act to add Sections 185034.2 and 185034.3 to the Public Utilities Code, relating to high-speed rail.*

LEGISLATIVE COUNSEL'S DIGEST

AB 365, as amended, Galgiani. ~~State highways: route locations.~~ *High-speed rail: contracts: small businesses.*

Existing law, the California High-Speed Rail Act, creates the High-Speed Rail Authority to develop and implement a high-speed rail system in the state, with specified powers and duties. Existing law, pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, approved by the voters as Proposition 1A at the November 4, 2008, general election, provides for the issuance of \$9.95 billion in general obligation bonds for high-speed rail and related purposes. Under federal law, funding is made available for allocation nationally to high-speed rail and other related projects.

Existing law provides for various programs to encourage the participation of small businesses, as certified by the Department of General Services, in state agency contracts, and sets forth the duties of the Director of General Services and the directors of other state agencies in this regard. Existing law imposes various penalties for certain unlawful actions in obtaining classification as a small business or in engaging in other unlawful actions.

This bill would enact similar penalties relative to the certification of businesses as small emerging business enterprises by the authority and for other unlawful actions.

This bill would also require the authority to report annually to the Legislature on the level of participation by business enterprises in contracts awarded under the authority’s small emerging business enterprise program.

~~Existing law authorizes the California Transportation Commission to adopt a location for a state highway on a route established by law. Existing law also authorizes the commission to alter or change the location of a state highway if the alteration is in the best interest of the state.~~

This bill would make nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 185034.2 is added to the Public Utilities
- 2 Code, to read:
- 3 185034.2. (a) (1) A business that has obtained classification
- 4 from the authority as a small emerging business enterprise,
- 5 microbusiness, or disabled veteran business enterprise by reason
- 6 of having furnished incorrect supporting information or by reason
- 7 of having withheld information, and that knew, or should have
- 8 known, the information furnished was incorrect or the information
- 9 withheld was relevant to its request for classification, and that by
- 10 reason of that classification has been awarded a contract to which
- 11 it would not otherwise have been entitled, shall do all of the
- 12 following:
- 13 (A) Pay to the authority any difference between the contract
- 14 amount and what the authority’s costs would have been if the
- 15 contract had been properly awarded.
- 16 (B) Pay to the authority an amount that is equal to the costs
- 17 incurred for investigating the small emerging business enterprise,
- 18 microbusiness, or disabled veteran business enterprise certification
- 19 that led to the finding that the contract had been improperly
- 20 awarded. Costs incurred shall include, but are not limited to, costs
- 21 and attorney’s fees paid by the authority related to hearings and
- 22 court appearances.

1 (C) In addition to the amounts described in subparagraphs (A)
2 and (B), be assessed a penalty in an amount of not more than 10
3 percent of the amount of the contract involved.

4 (2) The authority shall suspend any person or firm who violates
5 paragraph (1) from transacting any business with the authority
6 either directly as a prime contractor or indirectly as a
7 subcontractor, for a period of not less than three years and not
8 more than 10 years. The authority may reject the bid of a
9 suspended person or firm, or the services or goods, provided by
10 a subcontractor if that subcontractor has been declared ineligible
11 to transact any business with the authority under this section, even
12 though the bidder is a business in good standing.

13 (3) All payments to the authority pursuant to subparagraphs
14 (A) and (B) of paragraph (1) shall be deposited in the fund or funds
15 from which payments on the contract involved were made.

16 (4) All payments to the state pursuant to subparagraph (C) of
17 paragraph (1) shall be deposited in the General Fund.

18 (5) The small emerging business enterprise, microbusiness, or
19 disabled veteran business enterprise certification of a person or
20 firm found to have violated paragraph (1) shall be revoked by the
21 authority for a period of not less than five years. For an additional
22 or subsequent violation, the period of certification revocation or
23 suspension shall be extended for a period of up to 10 years. The
24 certification revocation shall apply to the principals of the business
25 and any subsequent businesses formed by one or more of those
26 principals.

27 (6) Prior to the imposition of any sanctions under this section,
28 a business shall be entitled to a public hearing and to at least five
29 working days' notice of the time and place thereof. The notice
30 shall state the reasons for the hearing.

31 (7) Any business or person that fails to satisfy any of the amounts
32 specified in subparagraphs (A) to (C), inclusive, of paragraph (1)
33 shall be prohibited from further contracting with the authority
34 until all amounts are satisfied.

35 (b) (1) It shall be unlawful for a person to do any of the
36 following:

37 (A) Knowingly and with intent to defraud, fraudulently obtain,
38 retain, attempt to obtain or retain, or aid another in fraudulently
39 obtaining or retaining or attempting to obtain or retain,
40 certification as a small emerging business enterprise,

1 *microbusiness, or disabled veteran business enterprise for the*
2 *purposes of this section.*

3 *(B) Willfully and knowingly make a false statement with the*
4 *intent to defraud, whether by affidavit, report, or other*
5 *representation, to a state official or employee for the purpose of*
6 *influencing the certification or denial of certification of any entity*
7 *as a small emerging business enterprise, microbusiness, or disabled*
8 *veteran business enterprise.*

9 *(C) Willfully and knowingly obstruct, impede, or attempt to*
10 *obstruct or impede, any state official or employee who is*
11 *investigating the qualifications of a business entity that has*
12 *requested certification as a small emerging business enterprise,*
13 *microbusiness, or disabled veteran business enterprise.*

14 *(D) Knowingly and with intent to defraud, fraudulently obtain,*
15 *attempt to obtain, or aid another person in fraudulently obtaining*
16 *or attempting to obtain, public moneys, contracts, or funds*
17 *expended under a contract, that are awarded by the authority, to*
18 *which the person is not entitled under this section.*

19 *(E) Knowingly and with intent to defraud, fraudulently represent*
20 *certified small emerging business enterprise, microbusiness, or*
21 *disabled veteran business enterprise participation in order to*
22 *obtain or retain a bid preference or a state contract.*

23 *(F) Knowingly and with intent to defraud, fraudulently represent*
24 *that a commercially useful function is being performed by a*
25 *certified small emerging business enterprise, microbusiness, or*
26 *disabled veteran business enterprise in order to obtain or retain*
27 *a bid preference or a state contract.*

28 *(G) Willfully and knowingly make or subscribe to any statement,*
29 *declaration, or other document that is fraudulent or false as to*
30 *any material matter, whether or not that falsity or fraud is*
31 *committed with the knowledge or consent of the person authorized*
32 *or required to present the declaration, statement, or document.*

33 *(H) Willfully and knowingly aid or assist in, or procure, counsel,*
34 *or advise, the preparation or presentation of a declaration,*
35 *statement, or other document that is fraudulent or false as to any*
36 *material matter, regardless of whether that falsity or fraud is*
37 *committed with the knowledge or consent of the person authorized*
38 *or required to present the declaration, statement, or document.*

1 (I) Establish, or knowingly aid in the establishment of, or
2 exercise control over, a firm found to have violated any provision
3 of subparagraphs (A) to (H), inclusive.

4 (2) (A) Any person who is found by the authority to have
5 violated any of the provisions of paragraph (1) is subject to a civil
6 penalty of not less than ten thousand dollars (\$10,000) nor more
7 than thirty thousand dollars (\$30,000) for the first violation, and
8 a civil penalty of not less than thirty thousand dollars (\$30,000)
9 nor more than fifty thousand dollars (\$50,000) for each additional
10 or subsequent violation.

11 (B) A person who violates any of the provisions of paragraph
12 (1) shall pay all costs incurred by the authority for any
13 investigations that led to the finding of the violation. Costs incurred
14 shall include, but are not limited to, costs and attorney's fees paid
15 by the authority related to hearings and court appearances. All
16 payments to the authority pursuant to this subparagraph shall be
17 deposited in the fund or funds from which payments on the contract
18 involved were made.

19 (3) The authority shall revoke the small emerging business
20 enterprise, microbusiness, or disabled veteran business enterprise
21 certification of any person or firm that violates paragraph (1) for
22 a period of not less than five years, and shall, in addition to the
23 penalties provided for in paragraph (2), suspend the person or
24 firm from bidding on, or participating as a contractor,
25 subcontractor, or supplier in, any authority contract or project
26 for a period of not less than three years nor more than 10 years.
27 However, for an additional or subsequent violation, the period of
28 certification revocation or suspension shall be extended for a
29 period of up to three years. The certification revocation shall apply
30 to the principals of the business and any subsequent businesses
31 formed by one or more of those principals. Any business or person
32 who fails to satisfy any of the penalties imposed pursuant to
33 subparagraphs (A) and (B) of paragraph (2) shall be prohibited
34 from further contracting with the authority until the penalties are
35 satisfied.

36 (4) If a contractor, subcontractor, supplier, subsidiary, or
37 affiliate thereof, has been found by the authority to have violated
38 paragraph (1) and that violation occurred within three years of
39 another violation of paragraph (1) found by the authority, the
40 authority shall prohibit that contractor, subcontractor, supplier,

1 subsidiary, or affiliate thereof, from entering into an authority
2 project or contract and from further bidding to the authority, and
3 from being a subcontractor to a contractor for the authority, and
4 from being a supplier to the authority.

5 (5) In addition to the penalties imposed by this section, if a
6 contractor is found to be in violation of subparagraph (F) of
7 paragraph (1), any existing contract between that contractor and
8 the authority may be terminated at the discretion of the authority,
9 and, where payment to the contractor is made directly by the
10 authority, the authority shall set off penalties and costs due to the
11 authority against any payments due to that contractor. In the event
12 that the authority has forwarded the contract and invoices to the
13 Controller for payment, the authority shall reduce the amount due
14 to the contractor as reflected in the claim schedule submitted to
15 the Controller by the amount of the penalties and costs due the
16 authority. In addition, with regard to any penalties and costs due
17 to the authority that the authority has not accounted for by either
18 a set off against payments due to the contractor or a reduction
19 reflected in the claim schedule submitted to the Controller, to the
20 extent that the Controller is making payments to the contractor on
21 behalf of any state agency, the Controller shall set off penalties
22 and costs due against any invoices due to the contractor from any
23 other contract awarded to the contractor.

24 SEC. 2. Section 185034.3 is added to the Public Utilities Code,
25 to read:

26 185034.3. The authority shall submit an annual report to the
27 Legislature on the level of participation by business enterprises
28 in contracts awarded under the authority's small emerging business
29 enterprise program. To the extent feasible, the report should draw
30 upon information and material developed according to other
31 requirements, including, but not limited to, the preappropriation
32 review process and the preexpenditure review process pursuant
33 to Section 2704.08 of the Streets and Highways Code. The report
34 shall be submitted pursuant to Section 9795 of the Government
35 Code.

36 SECTION 1. ~~Section 71 of the Streets and Highways Code is~~
37 ~~amended to read:~~

1 ~~71. The commission may, in its discretion, alter or change the~~
2 ~~location of a state highway if in the opinion of the commission the~~
3 ~~alteration or change is in the best interest of the state.~~

O