

**ASSEMBLY BILL**

**No. 1206**

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**Introduced by Assembly Member Galgiani**

February 18, 2011

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An act to add Section 185034.1 to the Public Utilities Code, relating to high-speed rail.

LEGISLATIVE COUNSEL'S DIGEST

AB 1206, as introduced, Galgiani. High-speed rail: contracts: small businesses.

(1) 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.

This bill would require the authority to identify essential components of, and adopt, a small emerging business enterprise program as part of contracts to be awarded by the authority relative to development and construction of the high-speed rail system. The bill would require the authority to provide certain bidding preferences and to establish a goal methodology to determine the appropriate level of involvement of small emerging business enterprises in authority contracts. The bill would require at least one public hearing by the authority before the program is adopted and would require the authority to include a plan for outreach

to small emerging business enterprises. The bill would require the authority to report annually to the Legislature in that regard.

(2) 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.

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

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

1 SECTION 1. The Legislature finds and declares all of the  
 2 following:

3 (a) The High-Speed Rail Authority has assembled teams of the  
 4 best minds throughout the world to guide our scientists and  
 5 engineers in the newest technologies for high-speed rail systems.  
 6 Revolutions in technology from around the world will be shared  
 7 with California during the engineering, design, and construction  
 8 phases of the project that will provide California workers with  
 9 valuable experience and training as we enter a new wave of  
 10 transportation innovation.

11 (b) In order to keep faith with the promise to promote California  
 12 jobs, following the passage of the Safe, Reliable High-Speed  
 13 Passenger Train Bond Act for the 21st Century, the state should  
 14 aid, counsel, assist, and protect, to the maximum extent possible,  
 15 the interests of small emerging business enterprises, including  
 16 microbusinesses.

17 (c) Furthermore, it is beneficial to the state to promote and  
 18 facilitate the fullest possible participation by California workers  
 19 to train for new jobs and careers in today’s global economy.

20 (d) Therefore, it is essential to ensure that a fair proportion of  
 21 the total purchases and contracts or subcontracts for property and  
 22 services for California’s high-speed rail system be placed with  
 23 these small emerging business enterprises.

1 SEC. 2. Section 185034.1 is added to the Public Utilities Code,  
2 to read:

3 185034.1. (a) The authority shall identify essential components  
4 of, and adopt, a small emerging business enterprise program as  
5 part of contracts to be awarded by the authority relative to the  
6 construction of the high-speed rail system. The program may have  
7 separate elements for small emerging business enterprises,  
8 microbusinesses, and disabled veteran business enterprises, as  
9 defined in subdivision (k). The program shall include proper  
10 oversight of expenditure of state and federal funds, contractor  
11 compliance monitoring and enforcement efforts, tracking and  
12 reporting mechanisms, and prompt payment, reporting, and project  
13 closeout provisions. The State Auditor, pursuant to its authority  
14 under subdivision (e) of Section 2704.04 of the Streets and  
15 Highways Code, shall review the expenditures associated with the  
16 program.

17 (b) In developing the small emerging business enterprise  
18 program, the authority shall do all of the following:

19 (1) Review and consider examples of existing small business  
20 enterprise programs used by other public agencies in California.

21 (2) Establish a goal methodology to determine the appropriate  
22 level of involvement of small emerging business enterprises in  
23 authority contracts, based on the likely nature of the work needed  
24 to be performed and the likely ability of the enterprises to do that  
25 work.

26 (3) Provide two small emerging business enterprise preferences,  
27 as follows:

28 (A) Provide a 5 percent bid preference to a responsible bid  
29 meeting specifications that is submitted by a small emerging  
30 business enterprise.

31 (B) Provide an incentive to nonsmall business bidders that  
32 submit a responsible bid meeting specifications if the bid  
33 incorporates the participation of small emerging business  
34 enterprises in the manner consistent with the goals set forth in the  
35 authority's program established pursuant to this section. A  
36 nonsmall business bidder shall be granted a 5 percent bid  
37 preference for meeting the goals.

38 (4) Identify small business enterprise certifications of other  
39 public agencies that are suitable for acceptance by the authority,  
40 in order to avoid having to create a separate certification process

1 solely for the authority. The authority shall establish a reciprocity  
2 program with other public agencies in this regard to utilize the  
3 certification directories of those agencies and to allow those other  
4 agencies to use access to any similar small business certification  
5 directory that the authority establishes. At a minimum, the authority  
6 shall recognize small business certifications from all of the  
7 following:

8 (A) Department of General Services, Procurement Division.

9 (B) Department of General Services, Office of Small Business  
10 and Disabled Veterans Business Enterprise Services.

11 (C) Los Angeles County Metropolitan Transportation Authority.

12 (D) Other public agencies, to the extent the small businesses  
13 listed by those agencies are certified as disadvantaged business  
14 enterprises by a California Unified Certification Program certifying  
15 agency.

16 (5) Establish, if determined to be desirable by the authority, a  
17 prequalified list of contractors for certain types of authority  
18 contracts, including, but not limited to, architectural and  
19 engineering contracts.

20 (6) Include a plan for outreach, including information on training  
21 and technical assistance that is available to assist small businesses  
22 in understanding and bidding on contracts to be offered by the  
23 authority. The authority shall specifically conduct an outreach  
24 campaign that contacts certified small businesses listed in the  
25 certification directories of the Department of General Services  
26 pursuant to subparagraphs (A) and (B) of paragraph (4).

27 (c) The authority shall hold at least one public hearing on the  
28 small emerging business enterprise goal methodology required by  
29 paragraph (2) of subdivision (b), and on the overall program  
30 developed pursuant to this section. Following the public hearing,  
31 the authority shall adopt the plan at a regularly scheduled meeting  
32 of the board. When adopting the plan, the authority shall take into  
33 consideration comments from the public hearing and written  
34 comments that it receives in that regard, and any hearings that the  
35 Legislature may hold prior to adoption of the plan.

36 (d) Upon approval by the authority of the small emerging  
37 business enterprise program, its provisions shall be included in the  
38 design-build procurement for Phase 1 and Phase 2 of the high-speed  
39 rail program and in the environmental, architectural, and  
40 engineering stage for Phase 2 of the high-speed rail program.

1 (e) (1) A business that has obtained classification as a small  
2 emerging business enterprise, microbusiness, or disabled veteran  
3 business enterprise by reason of having furnished incorrect  
4 supporting information or by reason of having withheld  
5 information, and that knew, or should have known, the information  
6 furnished was incorrect or the information withheld was relevant  
7 to its request for classification, and that by reason of that  
8 classification has been awarded a contract to which it would not  
9 otherwise have been entitled, shall do all of the following:

10 (A) Pay to the authority any difference between the contract  
11 amount and what the authority's costs would have been if the  
12 contract had been properly awarded.

13 (B) Pay to the authority an amount that is equal to the costs  
14 incurred for investigating the small emerging business enterprise,  
15 microbusiness, or disabled veteran business enterprise certification  
16 that led to the finding that the contract had been improperly  
17 awarded. Costs incurred shall include, but are not limited to, costs  
18 and attorney's fees paid by the authority related to hearings and  
19 court appearances.

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

23 (2) The authority shall suspend any person or firm who violates  
24 paragraph (1) from transacting any business with the authority  
25 either directly as a prime contractor or indirectly as a subcontractor,  
26 for a period of not less than three years and not more than 10 years.  
27 The authority may reject the bid of a suspended person or firm, or  
28 the services or goods, provided by a subcontractor if that  
29 subcontractor has been declared ineligible to transact any business  
30 with the authority under this section, even though the bidder is a  
31 business in good standing.

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

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

37 (5) The small emerging business enterprise, microbusiness, or  
38 disabled veteran business enterprise certification of a person or  
39 firm found to have violated paragraph (1) shall be revoked by the  
40 authority for a period of not less than five years. For an additional

1 or subsequent violation, the period of certification revocation or  
2 suspension shall be extended for a period of up to 10 years. The  
3 certification revocation shall apply to the principals of the business  
4 and any subsequent businesses formed by one or more of those  
5 principals.

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

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

14 (f) (1) It shall be unlawful for a person to do any of the  
15 following:

16 (A) Knowingly and with intent to defraud, fraudulently obtain,  
17 retain, attempt to obtain or retain, or aid another in fraudulently  
18 obtaining or retaining or attempting to obtain or retain, certification  
19 as a small emerging business enterprise, microbusiness, or disabled  
20 veteran business enterprise for the purposes of this section.

21 (B) Willfully and knowingly make a false statement with the  
22 intent to defraud, whether by affidavit, report, or other  
23 representation, to a state official or employee for the purpose of  
24 influencing the certification or denial of certification of any entity  
25 as a small emerging business enterprise, microbusiness, or disabled  
26 veteran business enterprise.

27 (C) Willfully and knowingly obstruct, impede, or attempt to  
28 obstruct or impede, any state official or employee who is  
29 investigating the qualifications of a business entity that has  
30 requested certification as a small emerging business enterprise,  
31 microbusiness, or disabled veteran business enterprise.

32 (D) Knowingly and with intent to defraud, fraudulently obtain,  
33 attempt to obtain, or aid another person in fraudulently obtaining  
34 or attempting to obtain, public moneys, contracts, or funds  
35 expended under a contract, that are awarded by the authority, to  
36 which the person is not entitled under this section.

37 (E) Knowingly and with intent to defraud, fraudulently represent  
38 certified small emerging business enterprise, microbusiness, or  
39 disabled veteran business enterprise participation in order to obtain  
40 or retain a bid preference or a state contract.

1 (F) Knowingly and with intent to defraud, fraudulently represent  
2 that a commercially useful function is being performed by a  
3 certified small emerging business enterprise, microbusiness, or  
4 disabled veteran business enterprise in order to obtain or retain a  
5 bid preference or a state contract.

6 (G) Willfully and knowingly make or subscribe to any statement,  
7 declaration, or other document that is fraudulent or false as to any  
8 material matter, whether or not that falsity or fraud is committed  
9 with the knowledge or consent of the person authorized or required  
10 to present the declaration, statement, or document.

11 (H) Willfully and knowingly aid or assist in, or procure, counsel,  
12 or advise, the preparation or presentation of a declaration,  
13 statement, or other document that is fraudulent or false as to any  
14 material matter, regardless of whether that falsity or fraud is  
15 committed with the knowledge or consent of the person authorized  
16 or required to present the declaration, statement, or document.

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

20 (2) (A) Any person who is found by the authority to have  
21 violated any of the provisions of paragraph (1) is subject to a civil  
22 penalty of not less than ten thousand dollars (\$10,000) nor more  
23 than thirty thousand dollars (\$30,000) for the first violation, and  
24 a civil penalty of not less than thirty thousand dollars (\$30,000)  
25 nor more than fifty thousand dollars (\$50,000) for each additional  
26 or subsequent violation.

27 (B) A person who violates any of the provisions of paragraph  
28 (1) shall pay all costs incurred by the authority for any  
29 investigations that led to the finding of the violation. Costs incurred  
30 shall include, but are not limited to, costs and attorney's fees paid  
31 by the authority related to hearings and court appearances. All  
32 payments to the authority pursuant to this subparagraph shall be  
33 deposited in the fund or funds from which payments on the contract  
34 involved were made.

35 (3) The authority shall revoke the small emerging business  
36 enterprise, microbusiness, or disabled veteran business enterprise  
37 certification of any person or firm that violates paragraph (1) for  
38 a period of not less than five years, and shall, in addition to the  
39 penalties provided for in paragraph (2), suspend the person or firm  
40 from bidding on, or participating as a contractor, subcontractor,

1 or supplier in, any authority contract or project for a period of not  
2 less than three years nor more than 10 years. However, for an  
3 additional or subsequent violation, the period of certification  
4 revocation or suspension shall be extended for a period of up to  
5 three years. The certification revocation shall apply to the principals  
6 of the business and any subsequent businesses formed by one or  
7 more of those principals. Any business or person who fails to  
8 satisfy any of the penalties imposed pursuant to subparagraphs (A)  
9 and (B) of paragraph (2) shall be prohibited from further  
10 contracting with the authority until the penalties are satisfied.

11 (4) If a contractor, subcontractor, supplier, subsidiary, or affiliate  
12 thereof, has been found by the authority to have violated paragraph  
13 (1) and that violation occurred within three years of another  
14 violation of paragraph (1) found by the authority, the authority  
15 shall prohibit that contractor, subcontractor, supplier, subsidiary,  
16 or affiliate thereof, from entering into an authority project or  
17 contract and from further bidding to the authority, and from being  
18 a subcontractor to a contractor for the authority, and from being a  
19 supplier to the authority.

20 (5) In addition to the penalties imposed by this section, if a  
21 contractor is found to be in violation of subparagraph (F) of  
22 paragraph (1), any existing contract between that contractor and  
23 the authority may be terminated at the discretion of the authority,  
24 and, where payment to the contractor is made directly by the  
25 authority, the authority shall set off penalties and costs due to the  
26 authority against any payments due to that contractor. In the event  
27 that the authority has forwarded the contract and invoices to the  
28 Controller for payment, the authority shall reduce the amount due  
29 to the contractor as reflected in the claim schedule submitted to  
30 the Controller by the amount of the penalties and costs due the  
31 authority. In addition, with regard to any penalties and costs due  
32 to the authority that the authority has not accounted for by either  
33 a set off against payments due to the contractor or a reduction  
34 reflected in the claim schedule submitted to the Controller, to the  
35 extent that the Controller is making payments to the contractor on  
36 behalf of any state agency, the Controller shall set off penalties  
37 and costs due against any invoices due to the contractor from any  
38 other contract awarded to the contractor.

39 (j) The authority shall submit an annual report to the Legislature  
40 on the level of participation by business enterprises in contracts

1 awarded under the small emerging business enterprise program.  
2 To the extent feasible, the report should draw upon information  
3 and material developed according to other requirements, including,  
4 but not limited to, the preappropriation review process and the  
5 preexpenditure review process pursuant to Section 2704.08 of the  
6 Streets and Highways Code. The report shall be submitted pursuant  
7 to Section 9795 of the Government Code.

8 (k) As used in this section, the following terms have the  
9 following meanings:

10 (1) “Disabled veteran business enterprise” means an enterprise  
11 that has been certified as meeting the qualifications established by  
12 subdivision (g) of Section 999 of the Military and Veterans Code.

13 (2) “Goal” means a target which, when achieved, indicates  
14 progress in a preferred direction. A goal is neither a requirement  
15 nor a quota.

16 (3) “Microbusiness” means a small business which, together  
17 with affiliates, has average annual gross receipts of two million  
18 five hundred thousand dollars (\$2,500,000) or less over the  
19 previous three years, or is a manufacturer with 25 or fewer  
20 employees.

21 (4) “Small emerging business enterprise” means an  
22 independently owned and operated business that is not dominant  
23 in its field of operation, the principal office of which is located in  
24 California, the officers of which are domiciled in California, and  
25 which, together with affiliates, has 100 or fewer employees and  
26 average annual gross receipts of ten million dollars (\$10,000,000)  
27 or less over the previous three years, or which is a manufacturer  
28 with 100 or fewer employees.

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