

AMENDED IN ASSEMBLY MARCH 30, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**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 amended, Galgiani. High-speed rail: contracts: small businesses.

~~(1) Existing~~

*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 *and to adopt an oversight and accountability program for the small business enterprise program*. ~~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 Department of General Services and Legislature in that regard and post the report on its Internet Web site.~~

~~(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.

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

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

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

21 ~~(b) In developing the small-emerging business enterprise~~  
22 ~~program, the authority shall do all of the following:~~

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

25 ~~(2) Establish a goal methodology to determine the appropriate~~  
26 ~~level of involvement of small-emerging business enterprises in~~  
27 ~~authority contracts, based on the likely nature of the work needed~~  
28 ~~to be performed and the likely ability of the enterprises to do that~~  
29 ~~work.~~

30 ~~(3) Provide two small-emerging business enterprise preferences,~~  
31 ~~as follows:~~

32 ~~(A) Provide a 5 percent bid preference to a responsible bid~~  
33 ~~meeting specifications that is submitted by a small-emerging~~  
34 ~~business enterprise.~~

35 ~~(B) Provide an incentive to non-small business bidders that~~  
36 ~~submit a responsible bid meeting specifications if the bid~~  
37 ~~incorporates the participation of small-emerging business~~  
38 ~~enterprises in the manner consistent with the goals set forth in the~~  
39 ~~authority’s program established pursuant to this section. A~~

1 ~~nonsmall business bidder shall be granted a 5 percent bid~~  
2 ~~preference for meeting the goals.~~

3 ~~(4) Identify small business enterprise certifications of other~~  
4 ~~public agencies that are suitable for acceptance by the authority,~~  
5 ~~in order to avoid having to create a separate certification process~~  
6 ~~solely for the authority. The authority shall establish a reciprocity~~  
7 ~~program with other public agencies in this regard to utilize the~~  
8 ~~certification directories of those agencies and to allow those other~~  
9 ~~agencies to use access to any similar small business certification~~  
10 ~~directory that the authority establishes. At a minimum, the authority~~  
11 ~~shall recognize small business certifications from all of the~~  
12 ~~following:~~

13 ~~(A) Department of General Services, Procurement Division.~~

14 ~~(B) Department of General Services, Office of Small Business~~  
15 ~~and Disabled Veterans Business Enterprise Services.~~

16 ~~(C) Los Angeles County Metropolitan Transportation Authority.~~

17 ~~(D) Other public agencies, to the extent the small businesses~~  
18 ~~listed by those agencies are certified as disadvantaged business~~  
19 ~~enterprises by a California Unified Certification Program certifying~~  
20 ~~agency.~~

21 ~~(5) Establish, if determined to be desirable by the authority, a~~  
22 ~~prequalified list of contractors for certain types of authority~~  
23 ~~contracts, including, but not limited to, architectural and~~  
24 ~~engineering contracts.~~

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

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

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

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

15 ~~(A) Pay to the authority any difference between the contract~~  
16 ~~amount and what the authority's costs would have been if the~~  
17 ~~contract had been properly awarded.~~

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

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

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

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

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

3     ~~(5) The small emerging business enterprise, microbusiness, or~~  
4 ~~disabled veteran business enterprise certification of a person or~~  
5 ~~firm found to have violated paragraph (1) shall be revoked by the~~  
6 ~~authority for a period of not less than five years. For an additional~~  
7 ~~or subsequent violation, the period of certification revocation or~~  
8 ~~suspension shall be extended for a period of up to 10 years. The~~  
9 ~~certification revocation shall apply to the principals of the business~~  
10 ~~and any subsequent businesses formed by one or more of those~~  
11 ~~principals.~~

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

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

20     ~~(f) (1) It shall be unlawful for a person to do any of the~~  
21 ~~following:~~

22     ~~(A) Knowingly and with intent to defraud, fraudulently obtain,~~  
23 ~~retain, attempt to obtain or retain, or aid another in fraudulently~~  
24 ~~obtaining or retaining or attempting to obtain or retain, certification~~  
25 ~~as a small emerging business enterprise, microbusiness, or disabled~~  
26 ~~veteran business enterprise for the purposes of this section.~~

27     ~~(B) Willfully and knowingly make a false statement with the~~  
28 ~~intent to defraud, whether by affidavit, report, or other~~  
29 ~~representation, to a state official or employee for the purpose of~~  
30 ~~influencing the certification or denial of certification of any entity~~  
31 ~~as a small emerging business enterprise, microbusiness, or disabled~~  
32 ~~veteran business enterprise.~~

33     ~~(C) Willfully and knowingly obstruct, impede, or attempt to~~  
34 ~~obstruct or impede, any state official or employee who is~~  
35 ~~investigating the qualifications of a business entity that has~~  
36 ~~requested certification as a small emerging business enterprise,~~  
37 ~~microbusiness, or disabled veteran business enterprise.~~

38     ~~(D) Knowingly and with intent to defraud, fraudulently obtain,~~  
39 ~~attempt to obtain, or aid another person in fraudulently obtaining~~  
40 ~~or attempting to obtain, public moneys, contracts, or funds~~

1 expended under a contract, that are awarded by the authority, to  
2 which the person is not entitled under this section.

3 ~~(E) Knowingly and with intent to defraud, fraudulently represent~~  
4 ~~certified small emerging business enterprise, microbusiness, or~~  
5 ~~disabled veteran business enterprise participation in order to obtain~~  
6 ~~or retain a bid preference or a state contract.~~

7 ~~(F) Knowingly and with intent to defraud, fraudulently represent~~  
8 ~~that a commercially useful function is being performed by a~~  
9 ~~certified small emerging business enterprise, microbusiness, or~~  
10 ~~disabled veteran business enterprise in order to obtain or retain a~~  
11 ~~bid preference or a state contract.~~

12 ~~(G) Willfully and knowingly make or subscribe to any statement,~~  
13 ~~declaration, or other document that is fraudulent or false as to any~~  
14 ~~material matter, whether or not that falsity or fraud is committed~~  
15 ~~with the knowledge or consent of the person authorized or required~~  
16 ~~to present the declaration, statement, or document.~~

17 ~~(H) Willfully and knowingly aid or assist in, or procure, counsel,~~  
18 ~~or advise, the preparation or presentation of a declaration,~~  
19 ~~statement, or other document that is fraudulent or false as to any~~  
20 ~~material matter, regardless of whether that falsity or fraud is~~  
21 ~~committed with the knowledge or consent of the person authorized~~  
22 ~~or required to present the declaration, statement, or document.~~

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

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

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

1     ~~(3) The authority shall revoke the small emerging business~~  
2 ~~enterprise, microbusiness, or disabled veteran business enterprise~~  
3 ~~certification of any person or firm that violates paragraph (1) for~~  
4 ~~a period of not less than five years, and shall, in addition to the~~  
5 ~~penalties provided for in paragraph (2), suspend the person or firm~~  
6 ~~from bidding on, or participating as a contractor, subcontractor,~~  
7 ~~or supplier in, any authority contract or project for a period of not~~  
8 ~~less than three years nor more than 10 years. However, for an~~  
9 ~~additional or subsequent violation, the period of certification~~  
10 ~~revocation or suspension shall be extended for a period of up to~~  
11 ~~three years. The certification revocation shall apply to the principals~~  
12 ~~of the business and any subsequent businesses formed by one or~~  
13 ~~more of those principals. Any business or person who fails to~~  
14 ~~satisfy any of the penalties imposed pursuant to subparagraphs (A)~~  
15 ~~and (B) of paragraph (2) shall be prohibited from further~~  
16 ~~contracting with the authority until the penalties are satisfied.~~

17     ~~(4) If a contractor, subcontractor, supplier, subsidiary, or affiliate~~  
18 ~~thereof, has been found by the authority to have violated paragraph~~  
19 ~~(1) and that violation occurred within three years of another~~  
20 ~~violation of paragraph (1) found by the authority, the authority~~  
21 ~~shall prohibit that contractor, subcontractor, supplier, subsidiary,~~  
22 ~~or affiliate thereof, from entering into an authority project or~~  
23 ~~contract and from further bidding to the authority, and from being~~  
24 ~~a subcontractor to a contractor for the authority, and from being a~~  
25 ~~supplier to the authority.~~

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

1 extent that the Controller is making payments to the contractor on  
2 behalf of any state agency, the Controller shall set off penalties  
3 and costs due against any invoices due to the contractor from any  
4 other contract awarded to the contractor.

5 (b) *The authority shall identify essential components of, and*  
6 *adopt, an oversight and accountability program relative to the*  
7 *small business enterprise program.*

8 (j)

9 (c) *The authority shall submit an annual report to the Department*  
10 *of General Services and the Legislature on the level of participation*  
11 *by business enterprises in contracts awarded under the small*  
12 *emerging business enterprise program. To the extent feasible, the*  
13 *report should draw upon information and material developed*  
14 *according to other requirements, including, but not limited to, the*  
15 *preappropriation review process and the preexpenditure review*  
16 *process pursuant to Section 2704.08 of the Streets and Highways*  
17 *Code. The report shall be submitted pursuant to Section 9795 of*  
18 *the Government Code.*

19 (d) *In order to promote transparency in public monitoring and*  
20 *encourage accountability, the report submitted by the authority*  
21 *to the Department of General Services and the Legislature shall*  
22 *be posted on the authority's Internet Web site.*

23 (k)

24 (e) As used in this section, the following terms have the  
25 following meanings:

26 (1) "Disabled veteran business enterprise" means an enterprise  
27 that has been certified as meeting the qualifications established by  
28 subdivision (g) of Section 999 of the Military and Veterans Code.

29 (2) "Goal" means a target which, when achieved, indicates  
30 progress in a preferred direction. A goal is neither a requirement  
31 nor a quota.

32 (3)

33 (2) "Microbusiness" means a small business which, together  
34 with affiliates, has average annual gross receipts of two million  
35 five hundred thousand dollars (\$2,500,000) or less over the  
36 previous three years, or is a manufacturer with 25 or fewer  
37 employees.

38 (4)

39 (3) "Small—emerging business enterprise" means an  
40 independently owned and operated business that is not dominant

1 in its field of operation, the principal office of which is located in  
2 California, the officers of which are domiciled in California, and  
3 which, together with affiliates, has 100 or fewer employees and  
4 average annual gross receipts of ten million dollars (\$10,000,000)  
5 or less over the previous three years, or which is a manufacturer  
6 with 100 or fewer employees.

O